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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2013–0085]

RIN 0579–AD87

Importation of Two Hybrids of Unshu Orange From the Republic of Korea Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of citrus fruit to allow the importation of commercial consignments of two Unshu orange hybrids from the Republic of Korea into the continental United States. These hybrids will be eligible for importation into the continental United States subject to the existing conditions for the importation of Unshu oranges from the Republic of Korea. We also are making one minor change to the existing regulations by adding an explicit statement that only commercial consignments of Unshu oranges will be eligible for importation into the continental United States. These changes will remove the prohibition on the importation of Unshu orange hybrids that can safely enter the United States, provided that certain conditions are met, and will codify an existing requirement.

DATES: Effective January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2240.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.28 govern the importation of citrus fruit into the United States. These regulations are intended to prevent the introduction of citrus canker, among other citrus diseases and pests, into the United States via the importation of citrus from affected foreign regions. Citrus canker is a disease that affects citrus and is caused by the infectious bacterium *Xanthomonas citri* subsp. *citri.*

On July 29, 2014, we published in the **Federal Register** (79 FR 43972–43974, Docket No. APHIS–2013–0085) a proposal [1] to amend the regulations to allow the importation of commercial consignments of two Unshu orange hybrids (Shiranuhi [(*C. reticulata* ssp. *unshiu* x *(C.* x *sinensis*)) x *C. reticulata*] and Setoka [(*C. reticulata* ssp. *unshiu* x (*C. x sinensis*)) x *C. reticulata*] x *C. reticulata*]) from the Republic of Korea into the continental United States subject to the existing conditions for the importation of Unshu oranges from the Republic of Korea. We also proposed to add to the regulations an explicit statement that only commercial consignments of Unshu oranges would be eligible for importation into the continental United States.

We solicited comments concerning our proposal for 60 days ending September 29, 2014. We received four comments by that date. They were from a producers' association, the National Plant Board, a State government, and an individual. Two of the commenters supported the proposed rule, and the other two expressed concerns that are addressed below.

One commenter, representing a State government, stated that the Unshu hybrids should only be allowed into citrus-producing States after the proposed mitigation measures have been shown to be effective in non-citrus-producing States in preventing the introduction of *Elsinoe australis,* the fungus that is the causal agent of sweet orange scab.

We do not agree with this comment. Based on the risk assessment we performed in support of the July 2014 proposed rule, we determined that the two Unshu hybrids could safely be imported into the continental United States under the conditions described in the accompanying risk management document (RMD). (Copies of the full risk assessment and the RMD are available on the Regulations.gov Web site (see footnote 1 in this document) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.) Moreover, Unshu oranges have been imported safely from the Republic of Korea under those conditions since 2010. The commenter did not present any evidence that those mitigation measures would not be effective when applied to the Unshu hybrids.

Another commenter stated that although the proposed rule would only allow for the importation of the Unshu hybrids into the continental United States, there is no enforcement of regulations that prevent the fruit from subsequently being shipped from the continental United States to Hawaii. According to the commenter, additional imports of oranges of any species or variety into Hawaii would be extremely dangerous for growers and the industry in Hawaii due to the possibility of the introduction of citrus greening. The commenter also suggested that the volume of such imports could lead to pricing instability.

We do not agree with these comments. Proposed § 319.28(c)(4) contains an explicit prohibition on the importation of the Unshu hybrids into Hawaii, as well as into American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The existing regulations in 7 CFR 301.11 prohibit the interstate movement of plants and plant parts that are subject to such import restrictions under part 319. Therefore, once the Unshu hybrids have been imported into the continental United States, their subsequent movement to Hawaii will be prohibited. The commenter did not present any evidence to support his claim that the interstate movement prohibition in § 301.11 is not currently being enforced. The commenter's concerns regarding citrus greening also appear to be misplaced, since the Unshu hybrids that will be allowed importation under this rulemaking are not considered to be pathways for citrus greening. We also do not expect the importation of the two Unshu hybrids from the Republic of Korea to result in price instability in either the continental United States or Hawaii. As noted in the economic

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0085.*

analysis accompanying the July 2014 proposed rule, the Korean Unshu orange share of the U.S. market for mandarin varieties is expected to remain negligible. We expect that Korean Unshu orange hybrids primarily will be sold at a premium in ethnic specialty stores and that any product displacement would largely be borne by Japanese Unshu orange imports.

Miscellaneous

Previously, the regulations in § 319.28(c), indicated that Unshu oranges from the Republic of Korea must, in addition to meeting all other applicable requirements, be grown on Cheju Island to be eligible for export to the United States. In this rule, we are changing the spelling to Jeju Island to reflect current usage.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule with the change mentioned in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register.**

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions on the importation of Unshu orange hybrids that we no longer find warranted. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This analysis provides the basis for certification that the rule will not have a significant economic impact on a substantial number of small entities.

This final rule amends the regulations to allow the importation of commercial consignments of two Unshu orange hybrids from the Republic of Korea into the continental United States subject to the existing conditions for the importation of Unshu oranges from the Republic of Korea. The rule also codifies an existing requirement by explicitly limiting Unshu orange shipments from the Republic of Korea to commercial consignments.

Easy-peel, sweet, juicy, seedless mandarin varieties, including Unshu oranges, are gaining popularity in the United States. The United States does not commercially produce Unshu oranges, but does produce various similar mandarin varieties. U.S. production of these mandarin varieties doubled in 6 years, from 250,000 metric tons (MT) in 2007, to almost 500,000 MT in 2012. Production values of mandarin varieties more than doubled, from $141 million in 2007 to $336 million in 2012. In general, harvesting and marketing activities are most active between January 1 and March 31 in California, and between November 15 and March 15 in Florida. U.S. imports of mandarin varieties averaged about 142,000 MT per year, valued at $178 million, between 2010 and 2012, with Chile, Spain, Peru, and Morocco the main sources. Net imports (imports minus exports) averaged about 100,000 MT per year.

The Republic of Korea and Japan are the principal exporters of Unshu oranges to the United States. In the Republic of Korea, almost all Unshu oranges are produced on the southern island of Jeju.[2] Over 99 percent of Unshu oranges are consumed domestically, and only about 0.6 percent of the Republic of Korea's Unshu oranges, totaling 3,611 MT and valued at $4.8 million, were exported in 2012. The United Kingdom was the main destination of Korean Unshu oranges in 2012; the United States was the fourth largest importer of Korean Unshu oranges that year, totaling 743 MT. The oranges were typically sold at a premium in ethnic specialty stores.

The pest risk analysis for this rule assumes the upper range of annual Unshu orange imports from the Republic of Korea to the United States to be about 2,000 MT. Prior to administrative suspension of Unshu orange imports from the Republic of Korea to the United States in 2003, imports of Unshu oranges from the Republic of Korea to the United States averaged about 650 MT annually between 1995 and 2002. Following the removal of the import suspension in 2010, imports of Unshu oranges from the Republic of Korea totaled 412 MT in 2011 (valued at $0.5 million) and 743 MT in 2012 (valued at $0.9 million). Given these import levels and the Republic of Korea's limited supply capacity and relatively stable domestic demand, projected exports of 2,000 MT may be high. Even if imports from the Republic of Korea were to reach 2,000 MT, the Korean Unshu orange share of the U.S. market for mandarin varieties is expected to remain negligible (about 1.4 percent of U.S. imports and 0.3 percent of the U.S. domestic supply of all mandarin varieties, based on U.S. production and trade data for the years 2010 through 2012). In addition, given the fact that fresh Unshu orange imports by the United States are predominantly supplied by Japan and the Republic of Korea, we expect any product displacement would be largely borne by Japanese Unshu orange imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows two Unshu orange hybrids to be imported into the continental United States from the Republic of Korea. State and local laws and regulations regarding the Unshu hybrids imported under this rule will be preempted while the fruit is in foreign commerce. Fresh Unshu hybrids are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0424, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

[2] Jeju is alternatively translated as Cheju.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319–FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.28 is amended as follows:

■ a. By revising paragraph (c).

■ b. By revising the OMB citation at the end of the section.

The revisions read as follows:

§ 319.28 Notice of quarantine.

* * * * *

(c) *Unshu oranges from the Republic of Korea.* The prohibition does not apply to Unshu oranges (*Citrus reticulata* Blanco var. *unshu,* Swingle [*Citrus unshiu* Marcovitch, Tanaka]), also known as Satsuma mandarin, or the Unshu, sweet, and mandarin orange hybrids Shiranuhi [(*C. reticulata* ssp. *unshiu* x *(C.* x *sinensis*)) x *C. reticulata*] and Setoka [(*C. reticulata* ssp. *unshiu* x (*C. x sinensis*)) x *C. reticulata*] x *C. reticulata*] grown on Jeju (also translated as Cheju) Island, Republic of Korea, and imported under permit into any area of the United States except for those specified in paragraph (c)(4) of this section, *Provided*, that each of the following safeguards is fully carried out:

(1) Before packing, the fruit shall be given a surface sterilization in accordance with part 305 of this chapter.

(2) The packinghouse in which the surface sterilization treatment is applied and the fruit is packed must be registered with the national plant protection organization of the Republic of Korea.

(3) The fruit must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of Korea, which includes an additional declaration stating that the fruit was given a surface sterilization in accordance with 7 CFR part 305 and was inspected and found free of *Elsinoe australis.*

(4) The fruit may be imported into any area of the United States except American Samoa, Hawaii, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(5) The fruit must be imported in commercial consignments only.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0173, 0579–0314, 0579–0418, and 0579–0424)

Done in Washington, DC, this 26th day of January 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–01773 Filed 1–29–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Parts 602, 707, 835, 850 and 851

RIN 1992–AA47

Technical Amendments: Transfer of Office Functions

AGENCY: Office of Environment, Health, Safety and Security, U.S. Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) has reorganized its Office of Health, Safety and Security by dividing the office into two separate organizations: The Office of Environment, Health, Safety and Security and the Office of Enterprise Assessments. The Office of Environment, Health, Safety and Security's mission is to provide corporate leadership and strategic approaches for protecting DOE's workers, the public, the environment and national security assets. This objective is accomplished through developing corporate policies and standards and providing guidance on their implementation; sharing operating experience, lessons learned, and best practices; and providing assistance and supporting services to line management with the goal of mission success as DOE's environment, health, safety and security advocate. The Office of Enterprise Assessments administers the Department's Congressionally-mandated enforcement functions in the areas of worker safety and health, nuclear safety, and security, and provides independent assessments of Departmental performance in the areas of security, worker safety and health, nuclear safety and the environment. This final rule makes technical amendments to DOE's regulations to substitute the officials to whom or offices to which functions have been transferred pursuant to the reorganization of offices and functions. This regulation does not alter substantive rights or obligations under current law.

DATES: This rule is effective on January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop AU–11, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–4714, or jackie.rogers@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

DOE has reorganized its Office of Health, Safety and Security (HSS) by dividing the office into two separate organizations: The Office of Environment, Health, Safety and Security (AU) and the Office of Enterprise Assessments (EA). HSS's responsibilities were divided between the organizations as described below.

AU's mission is to provide corporate leadership and strategic approaches for protecting DOE's workers, the public, the environment and national security assets. This objective is accomplished through developing corporate policies and standards and providing guidance on their implementation; sharing operating experience, lessons learned, and best practices; and providing assistance and supporting services to line management with the goal of mission success as DOE's environment, health, safety and security advocate. AU is led by the Associate Under Secretary for Environment, Health, Safety and Security who reports directly to the Under Secretary for Management and Performance.

EA is responsible for performing independent assessments in the areas of nuclear safety, worker safety and health, environment, cyber and physical security, and other critical functions; implementing Congressionally-mandated investigations in the areas of worker safety and health, nuclear safety, and security and as appropriate, assessing civil penalties or pursuing other enforcement measures for any

resulting violations; incorporating the lessons learned from assessments and enforcement activities into DOE safety and security training courses through its management of the National Training Center; and providing an open and effective means of communicating and creating collaborative relationships within and outside the Department through its stakeholder outreach program. EA is led by a Director who reports directly to the Secretary of Energy.

Certain of the functions that were transferred to AU are subject to regulations in title 10 of the Code of Federal Regulations. As a result of the transfer, title 10 of the Code of Federal Regulations contains references to DOE program offices and positions that are no longer extant. This final rule amends title 10 of the Code of Federal Regulations to reflect new organizational structures and titles, and update addresses that are no longer correct. None of the regulatory amendments in this notice of final rulemaking alter substantive rights or obligations under current law.

This final rule has been approved by the Secretary of Energy.

II. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

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 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 to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://energy.gov/gc/office-general-counsel*.

The regulatory amendments in this notice of final rulemaking reflecting transfers of functions and address changes relate solely to internal agency organization, management or personnel, and as such, are not subject to the requirement for a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553(a)(2)) (APA). There is no requirement under the APA or any other law that this rule be proposed for public comment. Consequently, this rulemaking is exempt from the requirements of the Regulatory Flexibility Act.

C. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule amends existing regulations without changing the environmental effect of the regulations being amended, and, therefore, is covered under the Categorical Exclusion in paragraph A5 of Appendix A to subpart D, 10 CFR part 1021. 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. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and 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 rule and has determined that it does not preempt State law and does 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. No further 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'' (61 FR 4729, February 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; and (3) provide a clear legal standard for affected conduct rather than a general standard and 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 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 final 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 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. DOE has determined that this regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

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 the Treasury and General Government Appropriations Act, 2001

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 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. 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 the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, 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 is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Administrative Procedure Act

The regulatory amendments in this notice of final rulemaking reflecting transfers of functions and address changes relate solely to internal agency organization, management or personnel, and as such, are not subject to the requirement for a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553(a)(2)) (APA). There is no requirement under the APA or any other law that this rule be proposed for public comment.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

List of Subjects

10 CFR Part 602

Grant programs-health, Medical research, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 707

Classified information, Drug testing, Government contracts, Employee assistance programs, Energy, Government contracts, Health and safety, National security, Reasonable suspicion, Special nuclear material, Substance abuse.

10 CFR Part 835

Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 850

Beryllium, Chronic beryllium disease, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 851

Civil penalties, Federal buildings and facilities, Occupational safety and health, Reporting and recordkeeping requirements.

Issued in Washington, DC, on January 26, 2015.

Matthew B. Moury,

Associate Under Secretary for Environment, Health, Safety and Security.

For the reasons set forth in the preamble, DOE amends chapters II and III of title 10 of the Code of Federal Regulations as follows:

PART 602—EPIDEMIOLOGY AND OTHER HEALTH STUDIES FINANCIAL ASSISTANCE PROGRAM

■ 1. The authority citation for part 602 continues to read as follows:

Authority: 42 U.S.C. 2051; 42 U.S.C. 5817; 42 U.S.C. 5901–5920; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308.

§ 602.1 [Amended]

■ 2. Section 602.1 is amended by removing ''Office of Health, Safety and Security'' and adding in its place ''Office of Environment, Health Safety and Security''.

§ 602.4 [Amended]

■ 3. Section 602.4 is amended by removing ''DOE Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 602.5 [Amended]

■ 4. Section 602.5(a) is amended by removing ''Office of Health, Safety and Security'' and adding in its place ''Office of Environment, Health, Safety and Security''.

§ 602.7 [Amended]

■ 5. Section 602.7(c) is amended by removing ''Office of Illness and Injury Prevention Programs, HS–13/ Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC–20585–1290, 301–903–4501'' and adding in its place ''Office of Domestic and International Health Studies, AU–13, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 301–903–2340''.

§ 602.9 [Amended]

■ 6. Section 602.9 is amended:
■ a. In paragraph (b), by removing ''Office of Health, Safety and Security'' and adding in its place ''Office of Environment, Health, Safety, and Security''; and
■ b. In paragraph (g) by removing ''Office of Health, Safety and Security'' and adding in its place ''Office of Environment, Health, Safety and Security'', and by removing ''Office of Health, Safety and Security's'' and adding in its place ''Office of Environment, Health, Safety and Security's''.

§ 602.10 [Amended]

■ 7. Section 602.10 is amended in paragraphs (b) and (c) by removing

''Office of Illness and Injury Prevention Programs, HS–13/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1290'' and adding in its place ''Office of Domestic and International Health Studies, AU–13, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585''.

§ 602.16 [Amended]

■ 8. Section 602.16 is amended by removing ''U.S. Department of Energy, Attn: Director of Classification, HS–90, P.O. Box A, Germantown, MD 20875'' and adding in its place ''U.S. Department of Energy, Attn: Director, Office of Classification, AU–60, P.O. Box A, Germantown, MD 20875''; by removing ''Office of Security Operations for Headquarters'' and adding in its place ''Office of Headquarters Security Operations''.

§ 602.17 [Amended]

■ 9. Section 602.17(a)(1) is amended by removing ''Office of Health, Safety and Security'' and adding in its place ''Office of Environment, Health, Safety and Security''.

PART 707—WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

■ 10. The authority citation for part 707 continues to read as follows:

Authority: 41 U.S.C. 701 *et seq.;* 42 U.S.C. 2012, 2013, 2051, 2061, 2165, 2201b, 2201i, and 2201p; 42 U.S.C. 5814 and 5815; 42 U.S.C. 7151, 7251, 7254, and 7256; 42 U.S.C. 2401 *et seq.*

■ 11. Section 707.4 is amended by adding the definition of ''Head of DOE Field Element'' in alphabetical order to read as follows:

§ 707.4 Definitions.

* * * * *

Head of DOE Field Element means an individual who is the manager or head of the DOE operations office or field office.

* * * * *

§ 707.5 [Amended]

■ 12. Section 707.5 is amended:
■ a. In paragraph (d) by removing ''DOE'' and adding in its place ''the Head of DOE Field Element'';
■ b. In paragraph (e):
■ i. By removing ''DOE'' in the first sentence, and adding in its place ''the Head of DOE Field Element'';
■ ii. By removing ''DOE official'' in the second sentence, and adding in its place ''Head of DOE Field Element'';
■ iii. By removing ''DOE'' in the third sentence, and adding in its place ''The Head of DOE Field Element''; and
■ iv. By removing ''DOE'' in the fifth sentence, and adding in its place ''Head of DOE Field Element''.
■ c. In paragraph (g):
■ i. By removing ''DOE'' in the first sentence, and adding in its place ''the appropriate Head of DOE Field Element'';
■ ii. By removing ''DOE'' in the second sentence, and adding in its place ''the Head of DOE Field Element''; and
■ iii. By removing ''DOE'' in the third sentence, and adding in its place ''The Head of DOE Field Element''.
■ d. In paragraph (h):
■ i. By removing ''DOE'', two occurrences in the first sentence, and adding in their places ''The Head of DOE Field Element''; and
■ ii. By removing ''DOE'' in the second sentence, and adding in its place ''the Head of DOE Field Element''; and
■ iii. By removing ''throughout DOE'' at the end of the second sentence.

■ 13. Section 707.7 is amended in paragraph (c):
■ a. By revising the first sentence; and
■ b. By removing ''DOE'' in the fifth sentence, and adding in its place ''the Head of DOE Field Element''.

The revision read as follows:

§ 707.7 Random drug testing requirements and identification of testing designated positions.

* * * * *

(c) Each contractor shall require random testing of any individual, whether or not an employee, who is allowed unescorted access to the control areas of the following DOE reactors: Advanced Test Reactor (ATR) and High Flux Isotope Reactor (HFIR).* * *

* * * * *

§ 707.10 [Amended]

■ 14. Section 707.10 is amended in paragraph (a)(2)(vi), by removing ''32.5–37.7 degrees centigrade or 90.5–99.8 degrees Fahrenheit'' and adding in its place ''32–38 degrees centigrade or 90–100 degrees Fahrenheit''.

§ 707.12 [Amended]

■ 15. Section 707.12(a) is amended by removing ''under subpart C of the HHS Mandatory Guidelines''.

§ 707.13 [Amended]

■ 16. Section 707.13 amended:
■ a. In paragraph (a), by removing ''paragraphs 2.4 (e) and (f) of'';
■ b. In paragraph (b), by removing ''[DHSS Publication No. (ADM) 88–1526]''.

PART 835—OCCUPATIONAL RADIATION PROTECTION

■ 17. The authority citation for part 835 continues to read as follows:

Authority: 42 U.S.C. 2201, 7191, 50 U.S.C. 2410.

§ 835.1 [Amended]

■ 18. Section 835.1(b)(6) is amended by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

■ 19. The authority citation for part 850 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.,* E.O. 12196, 3 CFR 1981 comp., at 145 as amended.

§ 850.10 [Amended]

■ 20. Section 850.10(b)(2) is amended by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 850.39 [Amended]

■ 21. Section 850.39 is amended in paragraph (a) by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security'', and in paragraph (h), by removing ''Office of Illness and Injury Prevention Programs, Office of Health, Safety and Security'' and adding in its place ''Office of Domestic and International Health Studies, Office of Environment, Health, Safety and Security''.

PART 851—WORKER SAFETY AND HEALTH PROGRAM

■ 22. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.;* 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

§ 851.3 [Amended]

■ 23. The definition of ''Under Secretary'' is amended by removing ''Under Secretary for Energy and Environment, or the Under Secretary for Science'' and adding in its place ''Under Secretary for Science and Energy, or Under Secretary for Management and Performance''.

§ 851.8 [Amended]

■ 24. Section 851.8 is amended in paragraph (b) by removing ''Office of Health, Safety and Security'' and adding in its place ''Office of Environment, Health, Safety and Security'', and in paragraph (c), by removing ''Office of Health, Safety and Security, Office of Enforcement, HS–40'', and adding in its place ''Office of Enterprise Assessments, Office of Enforcement''.

§ 851.10 [Amended]

■ 25. Section 851.10(a)(2)(ii) is amended by removing ''With''.

§ 851.11 [Amended]

■ 26. Section 851.11(b)(2) is amended by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 851.27 [Amended]

■ 27. Section 851.27(a)(2)(ii) is amended by removing ''Office of Health, Safety and Security'' and adding in its place ''Office of Environment, Health, Safety and Security''.

§ 851.30 [Amended]

■ 28. Section 851.30(a) is amended by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 851.31 [Amended]

■ 29. Section 851.31 is amended:
■ a. In paragraphs (a)(1), (a)(2), and (a)(3), by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security'';
■ b. In paragraph (b) introductory text:
■ i. By removing ''Chief Health, Safety and Security Officer'' and adding in its place ''the Associate Under Secretary for Environment, Health, Safety and Security''; and
■ ii. By removing the Chief, Health, Safety and Security Officer and adding in its place ''the Associate Under Secretary'', and
■ c. In paragraph (c)(5) by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 851.32 [Amended]

■ 30. Section 851.32 is amended:
■ a. In paragraph (a)(1), by removing ''Chief Health, Safety and Security Officer recommends approval of a variance application, the Chief Health, Safety and Security Officer'', and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security recommends approval of a variance application, the Associate Under Secretary''.
■ b. In paragraph (a)(2), by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.
■ c. In paragraph (a)(4), by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.
■ d. In paragraph (c)(1), by removing ''Chief Health, Safety and Security Officer recommends denial of a variance application, the Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security recommends denial of a variance application, the Associate Under Secretary''.
■ e. In paragraphs (c)(2)(i) and (ii), by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

§ 851.34 [Amended]

■ 31. In § 851.34, paragraphs (a) and (c) are amended by removing ''Chief Health, Safety and Security Officer'' and adding in its place ''Associate Under Secretary for Environment, Health, Safety and Security''.

[FR Doc. 2015–01778 Filed 1–29–15; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 390

RIN 3064–AE08

Removal of Transferred OTS Regulations Regarding Rules of Practice and Procedure and Amendments to FDIC Rules and Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to rescind and remove from the Code of Federal Regulations rules transferred to the FDIC following the dissolution of the former Office of Thrift Supervision (OTS) in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The rule also makes conforming amendments to FDIC regulations.

DATES: The Final Rule is effective on March 2, 2015.

FOR FURTHER INFORMATION CONTACT: Scott Patterson, Senior Review Examiner, Division of Risk Management Supervision, (202) 898–6953, Andrea Winkler, Supervisory Counsel, Legal Division, (202) 898–3727; Heather Walters, Counsel, Legal Division, (202) 898–6729.

SUPPLEMENTARY INFORMATION:

I. Background

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, 12 U.S.C. 5411, the powers, duties and functions of the former OTS were divided among the FDIC as to State savings associations, the Office of the Comptroller of the Currency (OCC) as to Federal savings associations, and the Board of Governors of the Federal Reserve System as to savings and loan holding companies.[1] Section 316(b) of the Dodd-Frank Act, 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory issuances were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

The Dodd-Frank Act directed the FDIC and OCC to consult with one another and to publish a list of continued OTS regulations to be enforced by each respective agency that would continue to remain in effect until the appropriate successor agency modified or removed the regulations in accordance with the applicable laws. The list was published by the FDIC and OCC as a Joint Notice in the **Federal Register** on July 6, 2011, and shortly thereafter, the FDIC published its

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

transferred OTS regulations as new FDIC regulations in 12 CFR parts 390 and 391. When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

Further, section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, to add State savings associations to the list of entities for which the FDIC is designated the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does today, it has the authority to issue, modify, and rescind regulations involving such associations as well as for State nonmember banks and insured branches of foreign banks.[2]

II. Proposed Rule

On April 21, 2014, the FDIC published an NPR regarding the removal of certain subparts from 12 CFR part 390 in an effort to streamline regulations for all FDIC-supervised institutions and eliminate duplicative regulations. The NPR also proposed minor technical changes to 12 CFR part 308 to conform the existing FDIC regulations to accommodate State savings associations, add jurisdiction for new statutes, and reflect internal organization changes. The specific changes are set forth below in Section IV.

A. Removal of Part 390, subpart C (Former OTS 12 CFR Part 509, subparts A and B)

Part 390, subpart C governs the rules and procedures applicable to administrative enforcement actions for State savings associations and their institution-affiliated parties (IAPs).[3] The former OTS rule was transferred to the FDIC with only nominal changes. As discussed in the Proposed Rule, the FDIC carefully reviewed part 390, subpart C, and compared it with part 308, subparts A and B, an FDIC regulation that existed before the transfer of part 390, subpart C, and that continues to remain in effect today. Like the transferred rule, part 308, subparts A and B govern the rules and procedures applicable to administrative enforcement proceedings for State nonmember banks and their IAPs.[4] Although the two rules were substantively the same, the FDIC noted some distinctions and technical differences between the transferred OTS rule and part 308.[5]

B. Removal of Part 390, Subpart E (Former OTS 12 CFR Part 513)

Part 390, subpart E governs the rules of practice before the FDIC and requirements for legal counsel.[6] The FDIC carefully reviewed the transferred rule, part 390, subpart E, and compared it with part 308, subpart C, an FDIC regulation that existed before the transfer of part 390, subpart E and that continues to remain in effect today. Like the transferred rule, part 308, subpart C governs the suspension and debarment rules for legal counsel. Although the two rules were substantively the same, the FDIC noted some distinctions and technical differences between the transferred OTS rule and part 308.

C. Removal of Part 390, Subpart D (Former OTS 12 CFR Part 512)

Part 390, subpart D sets the rules for investigations and formal examination proceedings. The FDIC carefully reviewed the transferred rule, part 390, subpart D, and compared it with part 308, subpart K, an FDIC regulation that existed before the transfer of part 390, subpart D and that continues to remain in effect today. Like the transferred rule, part 308, subpart K sets the rules for investigative proceedings. Although the two rules were substantively the same, the FDIC noted some distinctions and technical differences between the transferred OTS rule and part 308. The Final Rule conforms the rules and procedures for State savings associations and provides investigative authority for violations of certain statutes now enforced by the FDIC.

D. Removal of Part 390, Subpart B (Former OTS 12 CFR 508)

Part 390, subpart B sets the rules for removals, suspensions, and prohibitions where a crime is charged. The FDIC carefully reviewed the transferred rule, part 390, subpart B, and compared it with part 308, subpart N, an FDIC regulation that existed before the transfer of part 390, subpart B and that continues to remain in effect today. Like the transferred rule, part 308, subpart N sets the rules for proceedings relating to suspension, removal, and prohibition where a felony is charged. Although the two rules were substantively the same, the FDIC noted some distinctions and technical differences between the transferred OTS rule and part 308. The Final Rule conforms the rules and procedures for State savings associations.

III. Comments

The FDIC issued the NPR with a 60-day comment period that closed on June 20, 2014. The FDIC received no comments on its Proposed Rule, and consequently the Final Rule is adopted as proposed without any changes.

IV. Explanation of the Final Rule

As discussed in the NPR, part 390, subparts B, C, D, and E are substantively similar to part 308, subparts A, B, C, K, and N. Conforming the rules and procedures for all FDIC-supervised institutions will streamline the FDIC's rules and eliminate unnecessary regulations. To that effect, the Final Rule removes and rescinds 12 CFR part 390, subparts B, C, D, and E in their entirety. The Final Rule also makes minor technical changes to part 308, subparts A, B, C, K, and N to conform the FDIC's rules and accommodate State savings associations, as described below.

A. Technical Amendments to Part 308, Subpart A—Uniform Rules of Practice and Procedure, and Subpart B—General Rules of Procedure

The Final Rule addresses the key difference between part 308, subparts A and B, and part 390, subpart C, which relates to the scope of discovery in administrative enforcement proceedings. Specifically, the FDIC's rules at part 308, subparts A and B restrict discovery to document discovery only. State savings associations, for which the FDIC is the primary federal regulator (PFR), will now follow the same rules as other FDIC-supervised institutions. Additionally, the changes to part 308, subparts A and B include new jurisdictional language to ensure that the FDIC can take the necessary enforcement actions such as the assessment of civil money penalties against State savings associations.

B. Technical Amendments to Part 308, Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

The Final Rule adds language to the suspension and debarment section to require attorneys who appear before the FDIC as legal counsel to disclose any professional disciplinary actions to the Board.

[2] 12 U.S.C. 5412(b)(2)(C).

[3] 79 FR 22056 (Apr. 21, 2014).

[4] *Id.* at 22057.

[5] *Id.*

[6] *Id.* at 22058.

C. Technical Amendments to Part 308, Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

The Final Rule adds language to provide the FDIC with the necessary investigative powers under certain statutes that were previously enforced by the OTS against State savings associations such as section 5(d)(1)(B) of Home Owners' Loan Act of 1933, 12 U.S.C. 1464(c) (''HOLA''). There are also conforming amendments to make subpart K procedures applicable to all enforcement investigations conducted by FDIC. The Final Rule also updates the language of the subpart to reflect internal organizational changes to the FDIC, as well as clarifying the behavioral standards for those participating in an official investigation. Finally, the Final Rule clarifies who may be present during sworn testimony and how a witness requests transcripts of that testimony.

D. Technical Amendments to Part 308, Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony is Charged

The Final Rule adds language to include State savings associations, provides guidance on immediate compliance with the suspension or prohibition proceeding, and clarifies that the IAP has the burden of proof to show that his or her continued participation in the industry does not pose a threat to, or public confidence in insured institutions.

V. Administrative Law Matters

A. The Paperwork Reduction Act

The Final Rule rescinds and removes from FDIC regulations part 390, subparts B, C, D, and E. Further, with regard to part 308, the Final Rule makes minor amendments to subparts A, B, C, K, and N. The practical effect of these technical amendments to rules and procedures will not involve any new—or revisions to current—collections of information under the PRA.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq.,* generally requires an agency to consider whether a final rule will have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $550 million).[7] Pursuant to section 605(b) of the RFA, a final regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. For the reasons provided below, the FDIC certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed previously, part 390, subparts B, C, D, and E were transferred from OTS's rules and procedures governing administrative enforcement proceedings and all State savings associations were required to comply with them. Because these subparts are redundant of existing part 308 of the FDIC's rules, the Final Rule rescinds and removes part 390, subparts B, C, D, and E. As a result, all FDIC-supervised institutions—including State savings associations—must comply with Part 308 if they are subject to administrative enforcement proceedings. Consequently, today's Final Rule will have no significant economic impact on any State savings association.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Final Rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 801 *et seq.*

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, codified at 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. In the NPR, the FDIC invited comments on whether the Proposed Rule was clearly stated and effectively organized, and how the FDIC might make it easier to understand. Although the FDIC did not receive any comments, the FDIC sought to present the Final Rule in a simple and straightforward manner.

E. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[8] The FDIC's EGRPRA review is ongoing and is expected to be completed by 2016. The NPR solicited comments on whether the proposed rescission of part 390, subparts B, C, D, and E and technical amendments to part 308, subparts A, B, C, K and N would impose any outdated or unnecessary regulatory requirements on insured depository institutions. No comments on this issue were received. Upon review, the FDIC does not believe that part 308, as amended by the Final Rule, imposes any outdated or unnecessary regulatory requirements on any insured depository institutions.

List of Subjects

12 CFR Part 390

Administrative practice and procedure, Banks, Banking, Claims, Investigations lawyers, Penalties, State nonmember banks, State savings associations, and Standards of conduct.

12 CFR Part 308

Administrative practice and procedure, Banks, Banking, Claims, Investigations lawyers, Penalties, State nonmember banks, State savings associations, and Standards of conduct.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends parts 308 and 390 of title 12 of the Code of Federal Regulations as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), and 5414(b)(3); 15 U.S.C. 78 (h) and (i), 78o(c)(4), 78o–4(c), 78o–5, 78q–1, 78s 78u, 78u–2, 78u–3 and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–358, Pub. L. 109–351, and Pub. L. 111–203, 124 Stat. 1376.

Subpart A—Uniform Rules of Practice and Procedure

■ 2. Section 308.1 is amended by revising paragraphs (e) introductory text and (e)(1) and (9), and adding paragraphs (e)(12) through (14), to read as follows:

[7] 5 U.S.C. 601 *et seq.*

[8] Public Law 104–208 (Sept. 30, 1996).

§ 308.1 Scope.

* * * * *

(e) Assessment of civil money penalties by the FDIC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate regulatory agency for any violation of:

(1) Sections 22(h) and 23 of the Federal Reserve Act (FRA), or any regulation issued thereunder, and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1828(j) or 12 U.S.C. 1468;

* * * * *

(9) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the FDIC or the former Office of Thrift Supervision (OTS), the terms of any condition imposed in writing by the FDIC in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

* * * * *

(12) Certain provisions of Section 5 of the Home Owners' Loan Act (HOLA) or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464(d)(1), (5)–(8), (s), and (v);

(13) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d);

(14) Section 10 of HOLA, pursuant to 12 U.S.C. 1467a(a)(2)(D), (g), (i)(2)–(4) and (r); and

* * * * *

■ 2a. Section 308.3 is amended as follows:

■ a. Revise paragraphs (e) and (j)(3).

■ b. Redesignate paragraphs (k) through (r) as paragraphs (l) through (s) and revise newly redesignated paragraphs (l) through (s).

■ c. Add new paragraph (l).

The revisions read as follows:

§ 308.3 Definitions.

* * * * *

(e) *Designee* of the Board of Directors means officers or officials of the Federal Deposit Insurance Corporation acting pursuant to authority delegated by the Board of Directors.

* * * * *

(j) *Institution* includes:

* * * * *

(3) Any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467a(a));

* * * * *

(l) *Investigation* means any investigation conducted pursuant to section 10(c) of the FDIA or pursuant to section 5(d)(1)(B) of HOLA (12 U.S.C. 1464(d)(1)(B)).

(m) *Local Rules* means those rules promulgated by the FDIC in those subparts of this part other than subpart A.

(n) *Office of Financial Institution Adjudication* (OFIA) means the executive body charged with overseeing the administration of administrative enforcement proceedings of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve Board (FRB), the FDIC, and the National Credit Union Administration (NCUA).

(o) *Party* means the FDIC and any person named as a party in any notice.

(p) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (j) of this section.

(q) *Respondent* means any party other than the FDIC.

(r) *Uniform Rules* means those rules in subpart A of this part that pertain to the types of formal administrative enforcement actions set forth at § 308.1 and as specified in subparts B through P of this part.

(s) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

■ 3. Section 308.25 is amended by revising paragraph (b) to read as follows:

§ 308.25 Request for document discovery from parties.

* * * * *

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests 250 pages or more of copying, the requesting party shall pay for the copying and shipping charges. Copying charges are the current per page copying rate imposed by 12 CFR part 309 implementing the Freedom of Information Act (5 U.S.C. 552). The party to whom the request is addressed may require payment in advance before producing the documents.

* * * * *

Subpart B—General Rules of Procedure

■ 4. Section 308.101 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 308.101 Scope of Local Rules.

(a) Subparts B and C of the Local Rules prescribe rules of practice and procedure to be followed in the administrative enforcement proceedings initiated by the FDIC as set forth in § 308.1 of the Uniform Rules.

* * * * *

(d) Subparts A, B, and C of this part prescribe the rules of practice and procedure to applicable to adjudicatory proceedings as to which hearings on the record are provided for by the assessment of civil money penalties by the FDIC against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate regulatory agency for any violation of section 15(c)(4) of the Exchange Act (15 U.S.C. 78o(c)(4)).

■ 5. Section 308.107 is amended by revising paragraph (a) to read as follows:

§ 308.107 Document discovery.

(a) Parties to proceedings set forth at § 308.1 of the Uniform Rules and as provided in the Local Rules may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

* * * * *

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

■ 6. Section 308.109 is amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 308.109 Suspension and disbarment.

* * * * *

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any state, territory, district, commonwealth, or possession; or any person who has been and remains suspended or barred from practice before the OCC, Board of Governors, the OTS, the NCUA, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or any person who has been, within the last ten years, convicted of a felony, or of a misdemeanor involving moral turpitude, shall be suspended

automatically from appearing or practicing before the FDIC. A disbarment, suspension, or conviction within the meaning of this paragraph (b) shall be deemed to have occurred when the disbarring, suspending, or convicting agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken, and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Executive Secretary a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Any person who fails to so file a copy of the order, judgment, decree, or finding within 30 days after the entry of the order, judgment, decree, or finding or the date such person initiates practice before the FDIC, for that reason alone may be disqualified from practicing before the FDIC until such time as the appropriate filing shall be made. Failure to file any such paper shall not impair the operation of any other provision of this section.

* * * * *

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA and Section 5(d)(1)(B) of HOLA

■ 7. Section 308.144 is revised to read as follows:

§ 308.144 Scope.

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection with any open or failed insured depository institution, any institutions making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the FDIA (12 U.S.C. 1820(c)) or section 5(d)(1)(B) of HOLA (12 U.S.C. 1464(d)(1)(B)). The Uniform Rules and subpart B of the Local Rules shall not apply to investigations under this subpart.

■ 8. Section 308.145 is revised to read as follows:

§ 308.145 Conduct of investigation.

An investigation shall be initiated only upon issuance of an order by the Board of Directors; or by the General Counsel, the Director of the Division of Risk Management Supervision, the Director of the Division of Depositor and Consumer Protection, or their respective designees. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

■ 9. Section 308.146 is revised to read as follows:

§ 308.146 Powers of person conducting investigation.

The person designated to conduct the investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The persons who issue the order of investigation may limit, quash, or modify any subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board of Directors any instance where any attorney has engaged in contemptuous, dilatory, obstructionist, or contumacious conduct or has otherwise violated any provision of this part during the course of an investigation. The Board of Directors, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

■ 10. Section 308.147 is revised to read as follows:

§ 308.147 Investigations confidential.

Investigations shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in part 309 of this chapter and as otherwise required by law.

■ 11. Section 308.148 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 308.148 Rights of witnesses.

In an investigation:

* * * * *

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation. Neither attorney(s) for the institution that is the subject of the investigation, nor attorney(s) for any other interested persons, shall have any right to be present during the testimony of any witness not personally represented by such attorney;

* * * * *

■ 12. Section 308.150 is amended by revising paragraph (a) to read as follows:

§ 308.150 Transcripts.

(a) *General rule.* Transcripts of testimony, if any, shall be recorded by an official reporter, or by any other person or means designated by the person conducting the investigation. A witness may, solely for the use and benefit of the witness, obtain a copy of the transcript of his or her testimony at the conclusion of the investigation or, at the discretion of the person conducting the investigation, at an earlier time, provided that the witness submits a written request for the transcript and the transcript is available. The witness requesting a copy of his or her testimony shall bear the cost thereof.

* * * * *

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

■ 13. Section 308.161 is amended by republishing the introductory text and revising paragraph (a) to read as follows:

§ 308.161 Scope.

The rules and procedures set forth in this subpart shall apply to the following:

(a) Proceedings to suspend an institution-affiliated party of an insured State nonmember bank, or an insured State savings association, or to prohibit such party from further participation in the conduct of the affairs of any depository institution, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined at section 1818(g)(1)(E) of Title

12), where the individual is the subject of any state or federal information, indictment, or complaint, involving the commission of, or participation in:

* * * * *

■ 14. Section 308.163 is amended by revising paragraphs (a)(2) and (c), and adding paragraph (d), to read as follows:

§ 308.163 Notice of suspension or prohibition, and orders of removal or prohibition.

(a) * * *

(2) The suspension or prohibition shall be effective immediately upon service on the institution-affiliated party, who shall immediately comply with the requirements thereof, and shall remain in effect until final disposition of the information, indictment, complaint, or until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

* * * * *

(c) The notice of suspension or prohibition or the order of removal or prohibition shall:

(1) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefore, and any supporting evidence, may be filed with the Executive Secretary within 30 days after service of the written notice or order; and

(2) Set forth the basis and facts in support of the notice or order and address the relevant considerations specified in § 308.162.

(d) To obtain a hearing, the institution-affiliated party shall file with the Executive Secretary a written request for a hearing within 30 days after service of the notice of suspension or prohibition or the order of removal or prohibition, which shall:

(1) Admit or deny specifically each allegation in the notice or order, or state that the institution-affiliated party is without knowledge or information, which statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When an institution-affiliated party intends in good faith to deny only a part of or to qualify an allegation, he shall specify so much of it as is true and shall deny only the remainder; and

(2) Shall state whether the institution-affiliated party is requesting termination or modification of the notice or order, and shall state with particularity how he intends to show that his continued service to or participation in the conduct of the affairs of the depository institution would not, or is not likely to, pose a threat to the interests of its depositors or to impair public confidence in the depository institution.

■ 15. Section 308.164 is amended by revising paragraphs (b)(1), (3), and (5), and adding paragraph (b)(10), to read as follows:

§ 308.164 Hearings.

* * * * *

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

* * * * *

(3) The institution-affiliated party may appear at the hearing and shall have the right to introduce relevant and material documents. Members of the FDIC enforcement staff may attend the hearing and participate as representatives of the FDIC enforcement staff. Following the introduction of all evidence, the applicant and the representative of the FDIC enforcement staff shall have an opportunity for oral argument; however, the parties may jointly waive the right to oral argument, and, in lieu thereof, elect to submit written argument.

* * * * *

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the institution-affiliated party afforded the hearing. A copy of the transcript shall be sent directly to the presiding officer, who shall have authority to correct the record sua sponte or upon the motion of any party.

* * * * *

(10) The institution-affiliated party has the burden of showing, by a preponderance of the evidence, that his or her continued service to or participation in the conduct of the affairs of a depository institution does not, or is not likely to, pose a threat to the interests of the depository institution's depositors or threaten to impair public confidence in the depository institution.

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 16. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under *5 U.S.C. 552*; 559; *12 U.S.C. 2901 et seq.*

Subpart G also issued under *12 U.S.C. 2810 et seq.,* 2901 *et seq.*; *15 U.S.C. 1691*; *42 U.S.C. 1981*, 1982, 3601–3619.

Subpart I also issued under *12 U.S.C. 1831*x.

Subpart J also issued under *12 U.S.C. 1831*p–1.

Subpart K also issued under *12 U.S.C. 1817*; 1818; *15 U.S.C. 78*c; 78 *l*.

Subpart L also issued under *12 U.S.C. 1831*p–1.

Subpart M also issued under *12 U.S.C. 1818*.

Subpart O also issued under *12 U.S.C. 1828*.

Subpart P also issued under *12 U.S.C. 1470*; 1831e; 1831n; 1831p–1; 3339.

Subpart Q also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464.

Subpart R also issued under *12 U.S.C. 1463*; 1464; 1831m; 1831n; 1831p–1.

Subpart S also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; *15 U.S.C. 78*b; 78 *l*; 78m; 78n; 78p; 78q; 78w; *31 U.S.C. 5318; 42 U.S.C. 4106*.

Subpart T also issued under *12 U.S.C. 1462a*; 1463; 1464; *15 U.S.C. 78*c; 78 *l*; 78m; 78n; 78w.

Subpart U also issued under *12 U.S.C. 1462a*; 1463; 1464; *15 U.S.C. 78*c; 78 *l*; 78m; 78n; 78p; 78w; 78d–1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart V also issued under *12 U.S.C. 3201*–3208.

Subpart W also issued under *12 U.S.C. 1462a*; 1463; 1464; *15 U.S.C. 78*c; 78 *l*; 78m; 78n; 78p; 78w.

Subpart X also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464; 1828; 3331 *et seq.*

Subpart Y also issued under *12 U.S.C. 1831*o.

Subpart Z also issued under *12 U.S.C. 1462*; 1462a; 1463; 1464; 1828 (note).

Subpart B—[Removed and reserved]

■ 17. Remove and reserve part 390, subpart B consisting of §§ 390.10 through 390.23.

Subpart C—[Removed and reserved]

■ 18. Remove and reserve part 390, subpart C consisting of §§ 390.30 through 390.75.

Subpart D—[Removed and reserved]

■ 19. Remove and reserve part 390, subpart D consisting of §§ 390.80 through 390.86.

Subpart E—[Removed and reserved]

■ 20. Remove and reserve part 390, subpart E consisting of §§ 390.90 through 390.97.

Dated at Washington, DC, this 21st day of January, 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–01327 Filed 1–29–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AE17

Transferred OTS Regulations Regarding Possession by Conservators and Receivers for Federal and State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is rescinding and removing the former OTS regulation entitled ''Possession by Conservators and Receivers for Federal and State Savings Associations'' from the Code of Federal Regulations because it is not necessary. This rule was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

DATES: Effective March 2, 2015.

FOR FURTHER INFORMATION CONTACT: Frank C. Campagna, Associate Director, Receivership Operations, Division of Resolutions and Receiverships (972) 761–8025 or *FrCampagna@FDIC.gov*; or Shane Kiernan, Counsel, Legal Division (703) 562–2632 or *skiernan@fdic.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

The Dodd-Frank Act,[1] signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC as to State savings associations, the Office of Comptroller of the Currency (OCC) as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB) as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act[3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such advisory materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act[4] further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[5]

FDIC's Authority

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[6] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (the FDI Act)[7] and other laws as the ''appropriate Federal banking agency.'' Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act[8] and designated the FDIC as the ''appropriate Federal banking agency'' for State savings associations. As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations.

As noted, on June 14, 2011, the FDIC's Board of Directors reissued and redesignated certain regulations promulgated by the former OTS. These transferred OTS regulations were published as FDIC interim rules in the **Federal Register** on August 5, 2011.[9] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the regulations transferred to the FDIC set forth procedures to be followed by conservators and receivers for Federal and State savings associations upon taking possession of said entities and for providing notice of appointment. This OTS regulation, formerly found at 12 CFR part 558, was transferred to the FDIC with only nominal changes and is now subpart N in 12 CFR part 390.

The FDIC's authority to act as conservator or receiver and its powers and duties in those roles are set forth in the FDI Act and in regulations found in 12 CFR part 360. The Board has delegated authority to staff to establish policies and procedures for carrying out receivership operations. The FDI Act and the policies and procedures implemented and followed by FDIC staff subsume the responsibilities set forth in subpart N.[10]

II. Final Rule

Section 316(b) of the Dodd-Frank Act provides that the former OTS's regulations will continue in effect until they are modified, terminated, set aside, or superseded in accordance with applicable law.[11] After careful review of subpart N, the FDIC has determined that it should be rescinded and removed because it is unnecessary, or because it prescribes actions that are duplicative of actions taken by the OCC or state chartering authority. The provisions of the FDI Act and the FDIC's existing policies and procedures sufficiently address the provision of notice of appointment and the authority to take possession of, and exercise control over, the assets of a failed institution, including insured Federal and State savings associations. The FDIC issued a

[1] Public Law 111–203, 12 U.S.C. 5301, *et seq.* (2010).

[2] 12 U.S.C. 5411.

[3] 12 U.S.C. 5414(b).

[4] 12 U.S.C. 5414(c).

[5] 76 FR 39247 (July 6, 2011).

[6] 12 U.S.C. 5412(b)(2)(B)(i)(II).

[7] 12 U.S.C. 1811, *et seq.*

[8] 12 U.S.C. 1813(q).

[9] 76 FR 47652 (August 5, 2011).

[10] Such policies and procedures include the FDIC Division of Resolution and Receivership's Failed Financial Institution Closing Manual.

[11] 12 U.S.C. 5414(b).

notice of proposed rulemaking to rescind and remove subpart N in the **Federal Register** and received no comments on its proposal.[12]

12 CFR 390.240—Procedure Upon Taking Possession

The FDIC interim rule found at 12 CFR 390.240 (section 390.240) is the redesignation of the OTS regulation outlining procedures to be followed by conservators and receivers for Federal and State savings associations for taking possession of said entities upon appointment. The FDIC is rescinding and removing section 390.240 because it is unnecessary. Paragraph (a) requires the conservator or receiver to take possession of the failed institution's principal office in accordance with the terms of the appointment. The FDIC's procedure already provides that it takes coordinated simultaneous possession of all locations from which a failed institution operates. Moreover, the FDIC's powers and duties as conservator or receiver are set forth in the FDI Act, not pursuant to the ''terms of the . . . appointment.''

Paragraphs (b)(1) and (b)(5), respectively, provide that the conservator or receiver shall immediately take possession of the institution's books, records, and assets, and shall succeed to rights, titles, powers and privileges of the savings association and its stockholders, members, account holders, depositors, officers, and directors. These provisions are redundant of the FDI Act, which provides that the FDIC succeeds to ''all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution'' when acting as conservator or receiver.[13]

Paragraphs (b)(2), (3), and (4), respectively, instruct the conservator or receiver to ''notify in writing, served personally or by registered mail or telegraph'' all parties known to be holding or in possession of assets of the failed institution that the conservator or receiver has succeeded to all rights, powers and privileges of the failed institution; file a statement with the Executive Secretary that the conservator or receiver took possession of the failed institution; and post a notice on the door of the principal and other offices of the failed institution in the form, if any, prescribed by the OCC or state bank supervisor. For three reasons, these provisions are unnecessary given existing FDIC policies and procedures. First, the FDIC's practice is to demand the return of assets of the failed institution in whatever manner and form that is appropriate under the circumstances. Second, the Executive Secretary is provided with a copy of all closing documents by FDIC staff. Third, the OCC or state bank supervisor itself posts its order closing the institution on the door of the principal office.

12 CFR 390.241—Notice of Appointment

The FDIC interim rule found at 12 CFR 390.241 (section 390.241) is the redesignation of the OTS regulation outlining procedures for giving notice of the appointment of a conservator or receiver for a Federal or State savings association. The FDIC is rescinding and removing section 390.241 because it is unnecessary. Specifically, paragraph (a) requires the FDIC to designate the persons or entities who are to: (1) Give notice of the appointment ''to any officer or employee who is present in and appears to be in charge at the principal office of the savings association;'' [14] (2) serve a copy of the order of appointment by (i) ''leaving a certified copy of the order of appointment at the principal office of the savings association,'' [15] or (ii) ''handing a certified copy of the order of appointment to the previous conservator . . . or the officer or employee of the savings association . . . who is present in and appears to be in charge at the principal office of the savings association;'' [16] and (3) file with the Executive Secretary of the FDIC a statement that includes the date and time that notice of the appointment was given and service of the order of appointment was made.'' [17] It is not necessary to include these provisions among the FDIC's regulations because the OCC or state chartering authority is responsible for providing or serving notice of the appointment of the FDIC as conservator or receiver on a Federal or State savings association. Further, the FDIC's Executive Secretary maintains records of the appointment of the FDIC as conservator or receiver. Paragraph (b), which instructs the FDIC to cause a notice of the appointment of the conservator or receiver to be published in the **Federal Register**, is unnecessary because the FDIC causes such a publication regarding any institution for which it is appointed as conservator or receiver in accordance with its policy and procedures.

For the reasons stated above, the FDIC is rescinding and removing subpart N. Doing so will serve to streamline the FDIC's rules, prevent confusion and eliminate unnecessary regulations.

III. Regulatory Analysis

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) (PRA), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Rescinding and removing subpart N will not revise any existing information collections pursuant to the PRA. Consequently, the FDIC has not submitted any information collection request to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), requires that each federal agency either (1) certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or (2) prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. Rescinding and removing subpart N will leave the FDI Act as the sole source of the FDIC's authority to act as conservator or receiver for an insured depository institution and does not impose any obligations or restrictions on banking organizations, including small banking organizations. On this basis, the FDIC certifies that the removal of subpart N would not have a significant impact on a substantial number of small entities within the meaning of those terms as used in the RFA.

C. Small Business Regulatory Enforcement Fairness Act

No notice of a final rule is being provided to Congress regarding this amendment under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, *et seq.,* (SBREFA). SBREFA provides generally for agencies to report rules to Congress and for major rules not to take effect for a certain period after the notice has been received. However, section 251 of SBREFA provides that rules of agency practice and procedure that do not substantially affect the rights or obligations of non-agency parties are not subject to the reporting requirement and may be made effective in accordance

[12] 79 FR 45380, August 5, 2014.

[13] 12 U.S.C. 1821(d)(2)(A).

[14] 12 CFR 390.241(a)(1).

[15] 12 CFR 390.241(a)(2)(i).

[16] 12 CFR 390.241(a)(2)(ii).

[17] 12 CFR 390.241(a)(3).

with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.,* and any other applicable law. The Office of Management and Budget has determined that the Final Rule is not a ''major rule'' within the meaning of SBREFA.

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions. The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and has commenced the next decennial review. The action taken on this rule will be included as part of the EGRPRA review that is currently under way.

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a federal banking agency subject to the provisions of this section, the FDIC has sought to present the final rule to rescind and remove subpart N in a simple and straightforward manner. The FDIC's proposal to rescind and remove subpart N invited comments on whether the proposal was clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand. No comments were received.

List of Subjects in Part 390

Banks and banking, Savings associations.

Authority and Issuance

For the reasons stated in the preamble and under the authority of 12 U.S.C. 5412, the Board of Directors of the Federal Deposit Insurance Corporation amends 12 CFR part 390 as follows:

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 1. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.,* 2901 *et seq.;* 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart I also issued under 12 U.S.C. 1831x.

Subpart J also issued under 12 U.S.C. 1831p–1.

Subpart L also issued under 12 U.S.C. 1831p–1.

Subpart M also issued under 12 U.S.C. 1818.

Subpart O also issued under 12 U.S.C. 1828.

Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p–1; 3339.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463; 1464; 1831m; 1831n; 1831p–1.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b; 78 l; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78 l; 78m; 78n; 78w.

Subpart V also issued under 12 U.S.C. 3201–3208.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78 l; 78m; 78n; 78p; 78w.

Subpart X also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828; 3331 *et seq.*

Subpart Y also issued under 12 U.S.C.1831o.

Subpart Z also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828 (note).

Subpart N—[Removed and Reserved]

■ 2. Remove and reserve subpart N consisting of §§ 390.240 through 390.241.

Dated at Washington, DC, this 21st day of January, 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman.

Executive Secretary.

[FR Doc. 2015–01326 Filed 1–29–15; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0231; Directorate Identifier 2013–NM–163–AD; Amendment 39–18073; AD 2015–02–06]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes. This AD was prompted by reports of loose, broken, or backed-out spur gear bolts on the horizontal stabilizer trim actuator (HSTA). This AD requires a revision to the airplane flight manual, a revision to the maintenance or inspection program, as applicable, and replacement of HSTAs having certain part numbers. We are issuing this AD to detect and correct loose spur gear bolts on the HSTA, which, if combined with the failure of the primary load path, could lead to failure of the HSTA and subsequent loss of the airplane.

DATES: This AD becomes effective March 6, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 6, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0231*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.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.

FOR FURTHER INFORMATION CONTACT: Ricardo Garcia, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–28–7331; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes. The NPRM published in the **Federal Register** on April 15, 2014 (79 FR 21158). Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–18, dated July 16, 2013 (referred to

after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes. The MCAI states:

> There have been a number of reports where the HSTA spur gear bolts were found loose, broken or backed out. Investigation revealed that the root cause of the bolt loosening is due to incorrect bending of the anti-rotation tab washer and the improper application of Loctite glue during installation. Loose bolt(s) on the HSTA spur gear combined with the failure of the primary load path, could lead to failure of the HSTA and subsequent loss of the aeroplane.
>
> Bombardier Aerospace has introduced a modified HSTA [part number] P/N 604–92305–5 (vendor P/N 8454–2) to rectify the loose bolt problem. However, this modified HSTA has several quality control problems which could affect safety.
>
> This AD is issued to mandate the replacement of the affected HSTA with the new HSTA P/N 604–92305–7 (vendor P/N 8454–3).

In addition to requiring the replacement of any HSTA having the affected part number, this AD requires revising both the airplane flight manual and airplane maintenance or inspection program.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0231-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (79 FR 21158, April 15, 2014) and the FAA's response to the comment.

Request To Refer to Revised Service Information

Mher Krikorian stated that the current revision of the service information is not referenced in the NPRM (79 FR 21158, April 15, 2014) and requested that the NPRM be revised to refer to Bombardier Service Bulletin 604–27–032, Revision 02, dated April 22, 2014; and Bombardier Service Bulletin 605–27–002, Revision 02, dated April 22, 2014. Mr. Krikorian suggested that referring to the current revision of the service information would help to avoid requests for approval of alternative methods of compliance.

We agree with the commenter's request and have revised paragraph (j) of this AD to refer to Bombardier Service Bulletin 604–27–032, Revision 02, dated April 22, 2014; and Bombardier Service Bulletin 605–27–002, Revision 02, dated April 22, 2014. The revised service information includes only minor changes and does not include any substantive changes or new actions. We also added a new paragraph (k) to this AD to provide credit for actions accomplished prior to the effective date of this AD using Bombardier Service Bulletin 604–27–032, dated September 10, 2012; 604–27–032, Revision 01, dated April 29, 2013; 605–27–002, dated September 10, 2012; or Bombardier Service Bulletin 605–27–002, Revision 01, April 29, 2013; as applicable. We redesignated the subsequent paragraphs accordingly.

''Contacting the Manufacturer'' Paragraph in This AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, TCCA, or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DAO-authorized are not TCCA-approved, unless TCCA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Additional Changes to This AD

We revised paragraph (h) of this AD to require operators to revise the maintenance or inspection program, as applicable, by incorporating procedures for an Operational Test (BITE) of the Horizontal Stabilizer Trim Controls System (HSTCS), in accordance with a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. Bombardier Task 27–41–00–101, Operational Test (BITE) of the Horizontal Stabilizer Trim Controls System (HSTCS), is referenced as guidance material in new Note 1 to paragraph (h) of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 21158, April 15, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already

proposed in the NPRM (79 FR 21158, April 15, 2014).

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

Related Service Information

We reviewed Bombardier Temporary Revision (TR) 604/37, dated May 21, 2013, to the Bombardier Challenger CL–604 Airplane Flight Manual, PSP 604–1; and Bombardier TR 605/18, dated May 21, 2013, to the Bombardier Challenger CL–605 Airplane Flight Manual, PSP 605–1. This service information describes procedures for the stabilizer trim system check. We also reviewed Bombardier Service Bulletin 604–27–032, Revision 02, dated April 22, 2014; and Bombardier Service Bulletin 605–27–002, Revision 02, dated April 22, 2014. This service information describes procedures for replacing HSTAs. You can find this information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0231.

Costs of Compliance

We estimate that this AD affects 125 airplanes of U.S. registry.

We also estimate that it will take about 21 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $223,125, or $1,785 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0231*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2014–02–06 Bombardier, Inc.: Amendment 39–18073. Docket No. FAA–2014–0231; Directorate Identifier 2013–NM–163–AD.

(a) Effective Date

This AD becomes effective March 6, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes, certificated in any category, serial numbers 5301 and subsequent, equipped with horizontal stabilizer trim actuator (HSTA) part number (P/N) 604–92305–3 (vendor P/N 8454–1) or P/N 604–92305–5 (vendor P/N 8454–2).

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by reports of loose, broken, or backed out spur gear bolts on the horizontal stabilizer trim actuator (HSTA). We are issuing this AD to detect and correct loose spur gear bolts on the HSTA, which, if combined with the failure of the primary load path, could lead to failure of the HSTA and subsequent loss of the airplane.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revision

Within 30 days after the effective date of this AD, revise the Normal Procedures section of the applicable Bombardier AFM to include the information in the applicable temporary revision (TR) specified in paragraph (g)(1) or (g)(2) of this AD. The TRs introduce revised procedures for the stabilizer trim system check. Operate the airplane according to the limitations and procedures in the applicable TR. The revision may be done by inserting a copy of the applicable TR specified in paragraph (g)(1) or (g)(2) of this AD into the AFM. When the TR has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, provided the relevant information in the general revision is identical to that in the applicable TR, and the TR may be removed.

(1) Bombardier Temporary Revision (TR) 604/37, dated May 21, 2013, to the Bombardier Challenger CL–604 Airplane Flight Manual, PSP 604–1.

(2) Bombardier TR 605/18, dated May 21, 2013, to the Bombardier Challenger CL–605 Airplane Flight Manual, PSP 605–1.

(h) Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, by incorporating procedures for an Operational Test (BITE) of the Horizontal Stabilizer Trim Controls System (HSTCS), in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO),

ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). The initial compliance time for the operational test is within 100 flight hours after the effective date of this AD.

Note 1 to paragraph (h) of this AD: Bombardier Task 27–41–00–101, Operational Test (BITE) of the Horizontal Stabilizer Trim Controls System (HSTCS), provides guidance for the operational test specified in paragraph (h) of this AD. Bombardier Task 27–41–00–101 is included in the Bombardier Challenger 604 Time Limits/Maintenance Checks (TLMC) Manual; and in the Bombardier Challenger 605 TLMC Manual.

(i) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised, as required by paragraph (h) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m)(1) of this AD.

(j) HSTA Replacement

For airplanes equipped with a HSTA having P/N 604–92305–3 (vendor P/N 845401) or P/N 604–92305–5 (vendor P/N 8454–2): Within 3,000 flight hours or 26 months after the effective date of this AD, whichever occurs first, replace any HSTA having P/N 604–92305–3 (vendor P/N 845401) or P/N 604–92305–5 (vendor P/N 8454–2) with a HSTA having P/N 604–92305–7 (vendor P/N 8454–3), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–27–032, Revision 02, dated April 22, 2014; or Bombardier Service Bulletin 605–27–002, Revision 02, dated April 22, 2014; as applicable.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (j) of this AD if those actions were performed before the effective date of this AD using the service information identified in paragraphs (k)(1) through (k)(4) of this AD, as applicable. This service information is not incorporated by reference in this AD.

(1) Bombardier Service Bulletin 604–27–032, dated September 10, 2012.

(2) Bombardier Service Bulletin 604–27–032, Revision 01, dated April 29, 2013.

(3) Bombardier Service Bulletin 605–27–002, dated September 10, 2012.

(4) Bombardier Service Bulletin 605–27–002, Revision 01, April 29, 2013.

(l) Parts Installation Prohibition

As of the effective date of this AD, no person may install any HSTA having P/N 604–92305–3 (vendor P/N 8454–1) or 604–92305–5 (vendor P/N 8454–2) on any airplane.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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.

(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, New York ACO, ANE–170; or TCCA; or Bombardier, Inc.'s TCCA Design DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–18 dated July 16, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0231-0002.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(3) and (o)(4) of this AD.

(o) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 604–27–032, Revision 02, dated April 22, 2014.

(ii) Bombardier Service Bulletin 605–27–002, Revision 02, dated April 22, 2014.

(iii) Bombardier Temporary Revision 604/37, dated May 21, 2013, to the Bombardier Challenger CL–604 Airplane Flight Manual, PSP 604–1.

(iv) Bombardier Temporary Revision 605/18, dated May 21, 2013, to the Bombardier Challenger CL–605 Airplane Flight Manual, PSP 605–1.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(4) 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.

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

Issued in Renton, Washington, on January 11, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–01171 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0079; Directorate Identifier 2013–NM–091–AD; Amendment 39–18085; AD 2015–02–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–201, –202, –203, –301, –302, and –303 airplanes. This AD requires a one-time ultrasonic inspection for fractures of all aft mount-pylon bolts of each engine. This AD was prompted by a report of one bolt on the aft engine mount upper beam found totally broken. We are issuing this AD to detect and correct fracture of the aft mount-pylon bolts, which could result in failure of the engine mount and consequent detachment of the engine.

DATES: This AD becomes effective February 17, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 17, 2015.

We must receive comments on this AD by March 16, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* 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 AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@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–2015–0079; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0094, dated April 15, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–201, –202, –203, –301, –302, and –303 airplanes. The MCAI states:

> During a scheduled replacement of a CF6–80E1 engine #1 on an A330 aeroplane, one bolt on the aft engine mount upper beam was found totally broken. That bolt is one of the four bolts that attach the upper beam to the pylon.
>
> The subsequent analyses of the broken bolt and the upper beam identified the following:
>
> —a fatigue origin area with crack propagation from the boundary of the bolt,
>
> —a spiral groove with cold work and microstructural distortion underlying that extended axially along the shank, and
>
> —a score mark on counter-bore edge of the upper beam.
>
> The preliminary root-cause investigation shows that an unusual contact with the counter-bore edge of the beam induced a significant groove on the bolt during its installation in production. It is suspected that this groove led to a fatigue crack initiation and subsequent quick propagation leading to the complete fracture of the bolt.
>
> As the root-cause is still under investigation, including the installation sequence specific to this aeroplane—engine model, the other A330 propulsion systems are not affected.
>
> This condition, if not detected and corrected, could lead, in conjunction with a second fractured bolt, to the loss of engine mount structural integrity and potential engine detachment in flight as the remaining bolts would not be able to sustain the residual fatigue and limit loads.
>
> For the reasons described above, this [EASA] AD requires a one-time ultrasonic inspection of the four aft mount-pylon bolts of both engines for detection of completely sheared [fractured] bolts through the bolt section and, depending on finding, accomplishment of applicable corrective actions [repair].
>
> This [EASA] AD is considered as an interim action, pending the results of the ongoing investigations, and further AD action may follow.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0079.

Related Service Information

Airbus has issued Alert Operators Transmission (AOT) A71L002–13, dated April 8, 2013. The service information describes procedures to perform a one-time ultrasonic inspection for fractures of all aft mount-pylon bolts of each engine. 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 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0079; Directorate Identifier 2013–NM–091–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD 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 AD.

Costs of Compliance

We estimate that this AD affects 0 airplanes of U.S. registry.

We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $255 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition action specified in this AD. We have no way of determining the number of aircraft that might need this action.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information.

Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2015–02–18 Airbus: Amendment 39–18085. Docket No. FAA–2015–0079; Directorate Identifier 2013–NM–091–AD.

(a) Effective Date

This AD becomes effective February 17, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –301, –302, and –303 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by a report of one bolt on the aft engine mount upper beam found totally broken. We are issuing this AD to detect and correct fracture of the aft mount-pylon bolts, which could result in failure of the engine mount and consequent detachment of the engine.

(f) Compliance

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

(g) Bolt Inspection

Within 1,000 flight hours after the effective date of this AD, do a one-time ultrasonic inspection for fractures of all aft mount-pylon bolts of each engine, in accordance with Airbus Alert Operators Transmission (AOT) A71L002–13, dated April 8, 2013. If any fracture is detected, repair before further flight 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).

(h) Reporting

Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD to Airbus, at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. Send the report to the contact for inspection results specified in paragraph 7, ''REPORTING,'' of Airbus AOT A71L002–13, dated April 8, 2013.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. 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.

(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 the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

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

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0094, dated April 15, 2013, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0079.

(k) Material Incorporated by Reference

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

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

(i) Airbus Alert Operators Transmission A71L002–13, dated April 8, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(4) 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.

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

Issued in Renton, Washington, on January 15, 2015.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–01174 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0622; Directorate Identifier 2014–NM–009–AD; Amendment 39–18080; AD 2015–02–13]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (Embraer) Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This AD was prompted by a determination of the need to revise the airplane airworthiness limitations related to the pylon yokes I and II, and the skin panel of the windshield pillar. This AD requires revising the maintenance or inspection program, as applicable. We are issuing this AD to prevent fatigue cracking of various structural elements, which could affect the structural integrity of the airplane.

DATES: This AD becomes effective March 6, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 6, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0622;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (Embraer), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.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.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Embraer Model EMB –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The NPRM published in the **Federal Register** on September 4, 2014 (79 FR 52588).

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2014–01–01, dated January 20, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Embraer Model EMB –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The MCAI states:

> This [Brazilian] AD was prompted by a new revision to the airworthiness limitations requirements [related to the pylon yokes I and II, and the skin panel of the windshield pillar] of the Maintenance Review Board Report. We are issuing this [Brazilian] AD to ensure that fatigue cracking of various structural elements is detected and corrected.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0622-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 52588, September 4, 2014) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 52588, September 4, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 52588, September 4, 2014).

Related Service Information

We reviewed EMBRAER EMB145 Temporary Revision 15–3, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER EMB145 Maintenance Review Board Report MRB 145/1150; and EMBRAER EMB145 Temporary Revision 15–4, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER EMB145 Maintenance Review Board Report MRB–145/1150. The service information describes airworthiness limitations related to inspections of certain fuselage or pylon components. You can find this information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0622.

Costs of Compliance

We estimate that this AD affects 688 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85

per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $58,480, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0622;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2015–02–13 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–18080. Docket No. FAA–2014–0622; Directorate Identifier 2014–NM–009–AD.

(a) Effective Date

This AD becomes effective March 6, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons; 53, Fuselage.

(e) Reason

This AD was prompted by our determination of the need to revise the airplane airworthiness limitations to the pylons and fuselage. We are issuing this AD to prevent fatigue cracking of various structural elements, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 60 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, by incorporating EMBRAER EMB145 Temporary Revision (TR) 15–3, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER EMB145 Maintenance Review Board Report MRB 145/1150; and EMBRAER EMB145 TR 15–4, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER EMB145 Maintenance Review Board Report MRB–145/1150; as applicable.

(1) The compliance times depend on the airplane model, and the pre-modification and post-modification conditions specified in EMBRAER EMB145 TR 15–3, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER EMB145 Maintenance Review Board Report MRB 145/1150; and EMBRAER EMB145 TR 15–4, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER Maintenance Review Board Report MRB–145/1150; as applicable.

(2) The initial compliance times for the tasks specified in EMBRAER EMB145 TR 15–3, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER EMB145 Maintenance Review Board Report MRB 145/1150; and EMBRAER EMB145 TR 15–4, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER Maintenance Review Board Report MRB–145/1150; as applicable; are at the applicable threshold compliance times specified in EMBRAER EMB145 TR 15–3, dated August 26, 2013; and EMBRAER EMB145 TR 15–4, dated August 26, 2013; or within 600 flight cycles after the effective date of this AD, whichever occurs later. For the purposes of this AD, the initial compliance times (identified as ''Threshold'' or ''T'' in the service information) are expressed in ''total flight cycles.''

(h) No Alternative Actions and Intervals

After accomplishment of the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(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 Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian Airworthiness Directive 2014–01–01, dated January 20, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0622-0002.*

(k) Material Incorporated by Reference

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

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

(i) EMBRAER EMB145 Temporary Revision 15–3, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER EMB145 Maintenance Review Board Report MRB 145/1150.

(ii) EMBRAER EMB145 Temporary Revision 15–4, dated August 26, 2013, to the Airworthiness Limitation Requirements of the EMBRAER EMB145 Maintenance Review Board Report MRB–145/1150.

(3) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (Embraer), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.*

(4) 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.

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

Issued in Renton, Washington, on January 15, 2015.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–01177 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0188; Directorate Identifier 2013–NM–157–AD; Amendment 39–18079; AD 2015–02–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by reports of two in-service incidents where one side of the main landing gear (MLG) did not achieve down-lock. This AD requires doing a detailed inspection of the apex joints of the stabilizer brace lock link in the MLG for clearance; rectifying and repairing the clearance gap, if necessary; and lubricating the apex joints of the stabilizer brace lock link in the MLG. We are issuing this AD to detect and correct insufficiently greased stabilizer brace lock linkage of the MLG and over-torqued lock linkage attachment bolts, which could lead to the failure to extend and down-lock the MLG, and could affect the safe landing of the airplane.

DATES: This AD becomes effective March 6, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 6, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0188* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.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.

FOR FURTHER INFORMATION CONTACT: Luke Walker, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7363; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on April 8, 2014 (79 FR 19299).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–19, dated July 18, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition certain Bombardier, Inc. Model DHC–8–400 series airplanes. The MCAI states:

> There have been two reported in-service incidents where one side of the main landing gear (MLG) did not achieve down-lock resulting in a gear unsafe indication. In both cases, the MLG was ultimately extended and down-lock was achieved through the use of the alternate extension system or by cycling the MLG. The investigation revealed that in both cases, the MLG stabilizer brace lock linkages were insufficiently greased and the lock linkage attachment bolts were over-torqued.
>
> Failure to extend and down-lock the MLG could adversely affect the safe landing of the aeroplane.
>
> This [TCCA] AD mandates the [detailed] inspection, rectification [and repair the clearance gap] as required, and lubrication of both MLG stabilizer brace lock link apex joints.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0188-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 19299, April 8, 2014) and the FAA's response to each comment.

Request To Include Only Requirements That Affect the Unsafe Condition

Horizon Air requested that the NPRM (79 FR 19299, April 8, 2014) require only the section of the Accomplishment Instructions that corrects the unsafe condition. Horizon Air stated that the job set-up and close-out sections

specified in the Accomplishment Instructions of Bombardier Service Bulletin 84–32–121, dated May 27, 2013, do not directly correct the unsafe condition. Horizon Air also stated that incorporating the job set-up and close-out sections as a requirement of the NPRM restricts the operator's ability to perform other maintenance in conjunction with the incorporation of the service information. Horizon Air stated that it would like the NPRM to mandate section 3.B. of the Accomplishment Instructions, which addresses the unsafe condition.

We agree with the commenter's request and rationale. We have changed paragraphs (g), (g)(2), and (h) of this AD to specify that the actions be done in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–121, dated May 27, 2013.

Request To Remove Requirement To Include AD Reference in Repair Approvals

Horizon Air requested that the sentence in paragraph (g)(2) of the NPRM (79 FR 19299, April 8, 2014), stating, ''For a repair method to be approved, the repair approval must specifically refer to this AD,'' be removed. Horizon Air stated the sentence should not be included in the NPRM, or at the very least it should be modified because it will place an unnecessary regulatory burden on operators with airplanes built in Canada.

Horizon Air stated that Transport Canada Civil Aviation (TCCA) is the aviation authority for the Bombardier, Inc. Model DHC–8–400 series airplanes. Horizon Air also stated that the NPRM restates the requirement of the Canadian AD. Horizon Air stated that any repairs created by Bombardier, Inc. would have to be in compliance with the Canadian AD and the repair would specifically refer to the Canadian AD. Horizon Air stated that the bilateral agreement between Canada and the United States accepts documents approved by TCCA as meeting the requirements for FAA approval. Horizon Air asked whether the FAA AD number is really necessary when the repair is approved by TCAA and specifically refers to the Canadian AD. Horizon Air also stated that the repair meets the approval requirements from TCAA.

Horizon Air stated that the language specified in paragraph (g)(2) of the NPRM would force an operator who incorporated a repair method prior to the effective date of the AD to go back to the manufacturer and request a revision to the repair method to add the FAA AD number, even if the repair method referenced the Canadian AD.

Horizon Air stated that it has discussed this statement with Bombardier Aerospace, and the Q400 Engineering Department Management stated it is under the TCCA ''umbrella'' and it can only make reference to a Canadian AD on its repair drawings. Horizon Air stated that if this requirement is retained in the NPRM it would require an operator to somehow have a repair drawing revised to include the FAA AD number. Horizon Air also stated that this statement in the NPRM should allow the Canadian AD number to be equivalent to the FAA AD number.

Horizon Airlines stated that an operator could pursue an alternative method of compliance (AMOC), but that would add additional time and cost to comply with the NPRM. Horizon Airlines also stated that the additional time required for an AMOC will most likely delay the airplane's return to service. Horizon Airlines stated that if the AMOC is needed on a weekend or on a Federal holiday, the return to service would take even longer.

We concur with the commenter's request to remove from this AD the requirement that repair approvals specifically refer to this AD.

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD. The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (79 FR 19299, April 8, 2014), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include ''the Design Approval Holder (DAH) with a State of Design Authority's design organization approval (DOA)'' to refer to a DAH authorized to approve required repairs for the AD.

Comments were provided to another NPRM (Directorate Identifier 2012–NM–101–AD (79 FR 19299, April 8, 2014)) about these proposed changes. One commenter (UPS) to that NPRM stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, TCCA, or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DAO-authorized signature approval are not TCCA-approved, unless TCCA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility afforded previously by the Airworthy Product paragraph.

Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the AD Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI may have been issued some time before the FAA AD. Therefore, the DAO may have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DAO and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on the comment, we removed the requirement from this AD that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement in the future, the FAA will coordinate with affected DAHs and verify they are prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in an AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

We have also decided not to include a generic reference to either the ''delegated agent'' or the ''DAH with State of Design Authority design organization approval,'' but instead we will provide the specific delegation approval granted by the State of Design Authority for the DAH.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 19299, April 8, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 19299, April 8, 2014).

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

Related Service Information

Bombardier, Inc., has issued Bombardier Service Bulletin 84–32–121, dated May 27, 2013. This service information describes doing a detailed inspection of the apex joints of the stabilizer brace lock link in the MLG for clearance; rectifying and repairing the clearance gap, if necessary; and lubricating the apex joints of the stabilizer brace lock link in the MLG. You can find this information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0188.

Costs of Compliance

We estimate that this AD affects 75 airplanes of U.S. registry.

We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $19,125, or $255 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0188;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2015–02–12 Bombardier, Inc.: Amendment 39–18079. Docket No. FAA–2014–0188; Directorate Identifier 2013–NM–157–AD.

(a) Effective Date

This AD becomes effective March 6, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401 and –402 airplanes, certificated in any category, serial numbers 4001 through 4454 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by reports of two in-service incidents where one side of the main landing gear (MLG) did not achieve down-lock. We are issuing this AD to detect and correct insufficiently greased stabilizer brace lock linkage of the MLG and over-torqued lock linkage attachment bolts, which could lead to the failure to extend and down-lock the MLG, and could affect the safe landing of the airplane.

(f) Compliance

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

(g) Inspection

Within 1,000 flight hours or 6 months after the effective date of this AD, whichever occurs first: Do a detailed inspection of the apex joints of the stabilizer brace lock link in the main landing gear (MLG) for clearance, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–121, dated May 27, 2013.

(1) If the clearance gap is 0.001 inches (0.025 millimeters) or greater, do the action in paragraph (h) of this AD at the time specified in paragraph (h) of this AD.

(2) If the clearance gap is less than 0.001 inches (0.025 millimeters), before further flight, rectify the clearance gap, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–121, dated May 27, 2013; and do the action in paragraph (h) of this AD at the time specified in paragraph (h) of this AD. If the clearance gap cannot be rectified in accordance with Bombardier Service Bulletin 84–32–121, dated May 27, 2013: Before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). After the repair is done, do the action in paragraph (h) of this AD at the time specified in paragraph (h) of this AD.

Note 1 to paragraphs (g) and (h) of this AD: Completion of the actions in this AD does not affect the actions specified in the existing maintenance review board (MRB) task number 320001–201.

(h) Lubrication

Within 1,000 flight hours or 6 months after the effective date of this AD, whichever occurs first: Lubricate the apex joints of the stabilizer brace lock link in the MLG, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–121, dated May 27, 2013.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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.

(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, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–19, dated July 31, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov.* This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0188.

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 84–32–121, dated May 27, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) 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.

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

Issued in Renton, Washington, on January 14, 2015.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–01180 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0173; Directorate Identifier 2013–NM–069–AD; Amendment 39–18083; AD 2015–02–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2009–06–06 for all Airbus Model A310 and A300–600 series airplanes. AD 2009–06–06 required revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations and maintenance tasks for aging systems maintenance. This new AD requires revising the maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations. This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to prevent reduced structural integrity and reduced control of these airplanes due to the failure of system components.

DATES: This AD becomes effective March 6, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 6, 2015.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of April 28, 2009 (74 FR 12228, March 24, 2009).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0173*; or in person at the Docket Management

Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 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.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009–06–06, Amendment 39–15842 (74 FR 12228, March 24, 2009). AD 2009–06–06 applied to all Airbus Model A310 and Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes series airplanes. The NPRM published in the **Federal Register** on March 28, 2014 (79 FR 17451).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0075, dated March 20, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes. The MCAI states:

> The airworthiness limitations for Airbus aeroplanes are currently published in Airworthiness Limitations Section (ALS) documents.
>
> The mandatory instructions and airworthiness limitations applicable to the Aging Systems Maintenance (ASM) are specified in Airbus A310 or A300–600 ALS Part 4 documents, which are approved by the European Aviation Safety Agency (EASA). EASA AD 2007–0092 [*http://ad.easa.europa.eu/blob/easa_ad_2007_0092.pdf/AD_2007-0092*, which corresponds to FAA AD 2009–06–06, Amendment 39–15842 (74 FR 12228, March 24, 2009)] was issued to require compliance to the requirements as specified in these documents.
>
> The revision 02 of Airbus A310 and Airbus A300–600 ALS Part 4 documents introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with the instructions of ALS Part 4 could result in an unsafe condition.
>
> For the reasons described above, this new AD retains the requirements of EASA AD 2007–0092, which is superseded, and requires the implementation of the new or more restrictive maintenance requirements and/or airworthiness limitations as specified in Airbus A310 ALS Part 4, Revision 02, or Airbus A300–600 ALS Part 4, Revision 02, as applicable to aeroplane type/model.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0173-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (74 FR 12228, March 24, 2009), and the FAA's response to the comment.

Request To Include Variation to Service Information

FedEx asked that Airbus A300–600 Variation 0CVLG120001/C0S, dated August 24, 2012, to Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012, be included with the service information referenced for accomplishing the actions specified in the NPRM (74 FR 12228, March 24, 2009). FedEx stated that this variation provides additional trimmable horizontal stabilizer actuator (THSA) part numbers and is approved by EASA.

We agree with the commenter's request. The referenced variation added some dash numbers that were not previously listed in the Airworthiness Limitation Items (ALI), but all airplanes affected by the NPRM (74 FR 12228, March 24, 2009) have this basic part number. We have revised paragraph (j) of this AD to refer to Airbus A300–600 Variation 0CVLG120001/C0S, dated August 24, 2012, to Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012.

''Contacting the Manufacturer'' Paragraph in this AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the EASA, or Airbus's EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by

identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the ''delegated agent'' or ''design approval holder (DAH) with State of Design Authority design organization approval,'' but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 17451, March 28, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 17451, March 28, 2014).

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

Related Service Information

Airbus has issued A310 Airworthiness Limitations Section (ALS) Part 4—Ageing Systems Maintenance, Revision 02, dated November 30, 2012; and A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012. The service information describes procedures for revising the maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations. You can find this information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0173.

Costs of Compliance

We estimate that this AD affects 156 airplanes of U.S. registry.

The ALS revision required by AD 2009–06–06, Amendment 39–15842 (74 FR 12228, March 24, 2009), and retained in this AD takes about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2009–06–06 is $85 per product.

We also estimate that it takes about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $13,260, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0173*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–06–06, Amendment 39–15842 (74 FR 12228, March 24, 2009), and adding the following new AD:

2015–02–16 Airbus: Amendment 39–18083. Docket No. FAA–2014–0173; Directorate Identifier 2013–NM–069–AD.

(a) Effective Date

This AD becomes effective March 6, 2015.

(b) Affected ADs

This AD replaces AD 2009–06–06, Amendment 39–15842 (74 FR 12228, March 24, 2009).

(c) Applicability

This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls; Code 32, Landing Gear.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to prevent reduced structural integrity and reduced control of these airplanes due to the failure of system components.

(f) Compliance

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

(g) Retained Revision of Airworthiness Limitation Section (ALS) To Incorporate Limitations and Maintenance Tasks for Aging Systems Maintenance

This paragraph restates the requirements of paragraph (n) of AD 2009–06–06, Amendment 39–15842 (74 FR 12228, March 24, 2009). Within 3 months after April 28, 2009 (the effective date of AD 2009–06–06), revise the ALS of the Instructions for Continued Airworthiness (ICA) to incorporate Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006 (for Model A310 series airplanes); or Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006 (for Model A300–600 series airplanes). For all tasks identified in Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; and Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; do the tasks at the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable, except as provided by paragraph (h) of this AD. The repetitive inspections must be accomplished thereafter at the interval specified in Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; or Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; as applicable.

(1) At the initial compliance times (thresholds) specified in Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; or Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; as applicable; with the compliance times starting from the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Since first flight of the airplane.

(ii) Since the applicable part was new or refurbished if the part's life (in flight hours, flight cycles, landings, or calendar time, as applicable) can be conclusively determined.

(2) Within 3 months after doing the revision of the ALS of the ICA required by paragraph (h) of this AD.

Note 1 to paragraph (g) of this AD: For additional guidance on the trimmable horizontal stabilizer actuators (THSA) life limits, refer to Airbus Operators Information Telex (OIT) SE 999.0074/05/BB, dated August 3, 2005.

Note 2 to paragraph (g) of this AD: For additional guidance on the THSA life limits and calculation method for unknown history of parts, refer to Airbus OIT SE 999.0008/07/LB, dated January 16, 2007; and Airbus Service Information Letter 05–008, Revision 01, dated February 21, 2007.

(h) Retained Revision of ALS To Incorporate Certain Other Limitations and Maintenance Tasks for Aging Systems Maintenance

This paragraph restates the requirements of paragraph (o) of AD 2009–06–06, Amendment 39–15842 (74 FR 12228, March 24, 2009), with revised affected airplane language. For airplanes on which any life limitation/maintenance task has been complied with in accordance with the requirements of paragraph (f), (g), (k), (l), or (m) of AD 2009–06–06: The last accomplishment of each limitation/task must be retained as a starting point for the accomplishment of each corresponding limitation/task interval now introduced Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; and Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; as applicable.

(i) Retained No Alternative Inspections/Limitations

This paragraph restates the requirements of paragraph (p) of AD 2009–06–06, Amendment 39–15842 (74 FR 12228, March 24, 2009). Except as provided by paragraph (l) of this AD: After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspection, inspection intervals, or limitations may be used, except as required by paragraph (j) of this AD.

(j) New Requirements of This AD: Maintenance/Inspection Program Revision

Within 3 months after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated November 30, 2012 (for Model A310 series airplanes); or Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012, and Airbus A300–600 Variation 0CVLG120001/C0S, dated August 24, 2012, to Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012 (for Model A300–600 series airplanes). For all limitation/replacement/inspection tasks identified in Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated November 30, 2012; or Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012, and Airbus A300–600 Variation 0CVLG120001/C0S, dated August 24, 2012, to Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012; the initial compliance times for the tasks are at the later of the times specified in paragraphs (j)(1) and (j)(2) of this AD, as applicable. Doing any limitation/replacement/inspection task required by this paragraph terminates the corresponding task required by paragraph (g) of this AD.

(1) At the initial compliance times (thresholds) specified in Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated November 30, 2012; or Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012, and Airbus A300–600 Variation 0CVLG120001/C0S, dated August 24, 2012, to Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012; as applicable; with the compliance times starting from the later of the times specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this AD.

(i) Since first flight of the airplane.

(ii) Since the applicable part was new or refurbished if the part's life (in flight hours, flight cycles, landings, or calendar time, as applicable) can be conclusively determined.

(2) Within 3 months after the effective date of this AD.

(k) New Limitation: No Alternative Actions or Intervals

After accomplishment of the revision required by paragraph (j) of this AD, no alternative actions (*e.g.*, inspections) or intervals, may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, 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 the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0075, dated March 20, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0173-0002.*

(2) Service information identified in this AD that is not incorporated by reference in this AD is available at the addresses specified in paragraphs (n)(5) and (n)(6) of this AD.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 6, 2015.

(i) Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012.

(ii) Airbus A300–600 Variation 0CVLG120001/C0S, dated August 24, 2012, to Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated April 18, 2012.

(iii) Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 02, dated November 30, 2012.

(4) The following service information was approved for IBR on April 28, 2009 (74 FR 12228, March 24, 2009).

(i) Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006.

(ii) Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006.

(5) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 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.*

(6) 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.

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

Issued in Renton, Washington, on January 13, 2015.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–01182 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0525; Directorate Identifier 2013–NM–235–AD; Amendment 39–18078; AD 2015–02–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–300, A340–200, and A340–300 series airplanes. This AD was prompted by a report of substantial inner skin disbonding damage found on a rudder. This AD requires performing an inspection for damage of certain rudders, and repair if necessary. We are issuing this AD to detect and correct damage of the rudder, which could result in reduced structural integrity of the rudder.

DATES: This AD becomes effective March 6, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 6, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0525*; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@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.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A330–300, A340–200, and A340–300 series airplanes. The NPRM published in the **Federal Register** on August 13, 2014 (79 FR 47387).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0270R1, dated November 27, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Airbus Model A330–300, A340–200, and A340–300 series airplanes. The MCAI states:

One A310 operator found substantial inner skin disbonding damage on a rudder. The results of the subsequent investigation revealed that the most probable cause of this damage was a blunt impact with no visible damage from outside during the rudder handling. Such type of damage might grow with pressure variation during ground-air-ground cycles, and tests performed with other rudders showed a rapid propagation of damage during artificial pressure cycling.

This condition, if not detected and corrected, could affect the structural integrity of the rudder.

For the affected A310 and A300–600 aeroplanes, EASA issued AD 2013–0039 [*http://ad.easa.europa.eu/blob/easa_ad_2013_0039.pdf/AD_2013-0039*], to address and correct this potential unsafe condition.

As potentially affected rudders can also be installed on A330 and A340 aeroplanes, Airbus issued Alert Operator Transmission (AOT) A55L001–12 [dated December 20, 2012], pending Aircraft Maintenance Manual (AMM) 27–21–41 PB401 revision, to provide operators with updated rudder handling procedures.

EASA issued AD 2013–0270 [*http://ad.easa.europa.eu/blob/easa_ad_2013_0270.pdf/AD_2013-0270*], to require identification of affected rudders P/N [part number] A55471500XXX (where XXX stands for any numerical value), a one-time ultrasonic test (UT) inspection of each affected rudder to detect signs of disbonding and, depending on findings, accomplishment of applicable corrective action(s).

After [EASA] AD 2013–0270 was issued, operators commented that the batch of rudders to be inspected was not correctly defined.

For the reason described above, [EASA] AD 2013–0270 is revised to clarify that no action is required for rudders previously inspected in accordance with Airbus Service Bulletin (ASB) A330–55–3038 or SB A340–55–4034 [which are required by FAA AD 2009–10–11, Amendment 39–15907 (74 FR 23622, May 20, 2009)], as applicable to aeroplane model, provided the rudder has never been removed and/or installed on an aeroplane since this inspection.

Required actions include an elasticity of laminate checker inspection of the rudder side panel to detect external and internal disbonding, and a woodpecker or tap test inspection to detect external disbonding, and repair if necessary. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0525-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (79 FR 47387, August 13, 2014) and the FAA's response.

Request To Correct Certain Document Numbers

Lufthansa Technik (Lufthansa) asked that we correct certain document

numbers for the service information identified in paragraph (h) of the NPRM (79 FR 47387, August 13, 2014). Lufthansa stated that paragraph (h) of the NPRM incorrectly refers to Airbus Service Bulletins A300–55–3038 and A310–55–4034, instead of Airbus Service Bulletins A330–55–3038 and A340–55–4034, both dated November 7, 2007.

We agree with the commenter for the reason provided. We have corrected the document numbers for the service information identified in paragraph (h) of this AD accordingly.

Compliance Time Change

We revised the compliance time in paragraph (g) of this AD for the part numbers and serial numbers that cannot be identified from ''before further flight'' to ''within 3 months after the effective date of this AD.'' We have also revised the compliance time in paragraph (h) of this AD for the ultrasonic test inspection from ''before further flight'' to ''within 3 months after the effective date of this AD.'' This compliance time corresponds to the compliance time specified in the MCAI. We have determined this compliance time will provide an acceptable level of safety.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 47387, August 13, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 47387, August 13, 2014).

Related Service Information

Airbus has issued Alert Operators Transmission A55L001–12, dated December 20, 2012. The service information describes procedures for an inspection for damage of certain rudders. You can find this information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0525.

Costs of Compliance

We estimate that this AD affects 74 airplanes of U.S. registry.

We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $75,480, or $1,020 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0525*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2015–02–11 Airbus: Amendment 39–18078. Docket No. FAA–2014–0525; Directorate Identifier 2013–NM–235–AD.

(a) Effective Date

This AD becomes effective March 6, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; except airplanes on which Airbus Modification 41800 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Reason

This AD was prompted by a report of substantial inner skin disbonding damage on a rudder. We are issuing this AD to detect and correct damage of the rudder, which could result in reduced structural integrity of the rudder.

(f) Compliance

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

(g) Rudder Assembly Identification

Within 3 months after the effective date of this AD, inspect for the rudder assembly part number and serial number, in accordance with Airbus Alert Operators Transmission (AOT) A55L001–12, dated December 20, 2012. If the part number or serial number cannot be identified, within 3 months after the effective date of this AD, identify the part number and serial number 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). If approved by the DOA, the approval must include the DOA-authorized signature.

(h) Inspection

If a rudder assembly having any part number starting with A55471500 or A55471500XXX (where XXX stands for any numerical value) is found during the inspection required by paragraph (g) of this AD, and that rudder assembly has been inspected before the effective date of this AD, as specified in Airbus Service Bulletin A330–55–3038, dated November 7, 2007 (which is not incorporated by reference in this AD); or Airbus Service Bulletin A340–55–4034, dated November 7, 2007 (which is not incorporated by reference in this AD); as applicable; and that rudder assembly has been removed and installed on any airplane after the inspection or that has been inspected off-wing: Within 3 months after the effective date of this AD, do an ultrasonic test inspection for damage (*e.g.*, disbonding and liquid ingress) of the rudder side panel along the Z-profile and in the booster area, in accordance with Airbus AOT A55L001–12, dated December 20, 2012. If any damage is found, before further flight, do the inspections specified in paragraphs (h)(1) and (h)(2) of this AD to confirm disbonding damage, in accordance with Airbus AOT A55L001–12, dated December 20, 2012.

(1) Do an elasticity of laminate checker inspection to detect external and internal disbonding.

(2) Do a woodpecker or tap test inspection to detect external disbonding.

(i) Repair

If any disbonding or damage (*e.g.* liquid ingress) is confirmed during any inspection required by paragraphs (h), (h)(1), and (h)(2) of this AD, repair at the time specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) If the disbonding is less than or equal to 50 millimeters (mm) in width and less than or equal to 150 mm in length: Before further flight, vent the rudder core using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. Within 100 flight cycles after venting the rudder core, do a permanent repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval for the venting and repair methods must include the DOA-authorized signature.

(2) If the disbonding is greater than 50 mm in width, or greater than 150 mm in length: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) If any damage other than disbonding (*e.g.,* liquid ingress) is confirmed during any inspection required by paragraph (h) of this AD, before further flight, repair, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Parts Installation Limitation

As of the effective date of this AD, you may install, on any airplane, a rudder assembly having part number A55471500XXX (where XXX stands for any numerical value), provided the inspection required by paragraph (h) of this AD and all applicable repair actions required by paragraph (i) of this AD are done before further flight.

(k) 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. 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.

(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 DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0270R1, dated November 27, 2013, 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–2014–0525.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

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

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

(i) Airbus Alert Operators Transmission A55L001–12, dated December 20, 2012, including Inspection Flow Chart AOpT ref.: A55L001–12, not dated. The document number and date of this document are identified on only the first page of this AOT.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.*

(4) 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.

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

Issued in Renton, Washington, on January 15, 2015.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–01184 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0527; Directorate Identifier 2014–NM–045–AD; Amendment 39–18071; AD 2015–02–04]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model MYSTERE–FALCON 50 airplanes. This AD was prompted by a report of an untimely and intermittent indication of slat activity due to chafing of the electrical wiring under the glare shield and behind the flight deck front panel. This AD requires installing two protective plates between the electrical wiring under the glare shield and the engine fire pull handles. We are issuing this AD to prevent chafing of the electrical

wiring, which could result in a short circuit and generation of smoke in the cockpit, potential loss of several functions essential for safe flight, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective March 6, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 6, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0527* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.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.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Dassault Aviation Model MYSTERE–FALCON 50 airplanes. The NPRM published in the **Federal Register** on August 12, 2014 (79 FR 47031).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0024, dated January 23, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Dassault Aviation Model MYSTERE–FALCON 50 airplanes. The MCAI states:

> One operator experienced an untimely and intermittent indication of slat activity on his aeroplane. The results of the subsequent investigation revealed that electrical wiring under the glare shield and behind the flight deck front panel was chafing with hardware and was short-circuited to ground. This situation may have resulted from an incorrect installation of the wiring during a previous maintenance action in the area. A design review identified a lack of protection of the affected electrical wiring bundle, which would have prevented damage caused by chafing with aeroplane structural parts.
>
> This condition, if not corrected, might lead to an electrical short circuit and generation of smoke, possibly affecting operation of systems and resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Dassault Aviation issued [service bulletin] SB F50–530, providing instructions for installation of a protective plate on the electrical wiring.
>
> For the reasons described above, this [EASA] AD requires modification of the aeroplane by installing a protective plate on the electrical wiring.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0527-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 47031, August 12, 2014) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 47031, August 12, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 47031, August 12, 2014).

Related Service Information

We reviewed Dassault Service Bulletin F50–530, dated November 12, 2013. The service information describes procedures for installing two protective plates between the electrical wiring under the glare shield and the engine fire pull handles. You can find this information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0527.

Costs of Compliance

We estimate that this AD affects 250 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	26 work-hours × $85 per hour = $2,210	$96	$2,306	$576,500

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0527*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2014–02–04 Dassault Aviation: Amendment 39–18071. Docket No. FAA–2014–0527; Directorate Identifier 2014–NM–045–AD.

(a) Effective Date

This AD becomes effective March 6, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model MYSTERE–FALCON 50 airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airplanes with manufacturer serial numbers 5, 7, 27, 30, 34, 36, 78, 132, and 251 through 352 inclusive.

(2) Airplanes with manufacturer serial numbers 2 through 250 inclusive, having Honeywell (formerly Allied Signal, Garrett AiResearch) TFE731–40–1C engines modified by Dassault Aviation Service Bulletin F50–280.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by a report of an untimely and intermittent indication of slat activity due to chafing of the electrical wiring under the glare shield and behind the flight deck front panel. We are issuing this AD to prevent chafing of the electrical wiring, which could result in a short circuit and generation of smoke in the cockpit, potential loss of several functions essential for safe flight, and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Install Protective Plates

Within 74 months after the effective date of this AD, install two Rilsan protective plates between the glare shield electrical wiring and the engine fire pull handles, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–530, dated November 12, 2013.

(h) 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. 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.

(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 the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0024, dated January 23, 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 it in Docket No. FAA–2014–0527–0002.

(j) Material Incorporated by Reference

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

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

(i) Dassault Service Bulletin F50–530, dated November 12, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com*.

(4) 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.

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

Issued in Renton, Washington, on January 12, 2015.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–01185 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30998; Amdt. No. 3626]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These

changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 30, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 30, 2015.

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

For Examination

1. U.S. Department of Transportation, Docket Ops—M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC, 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFRs, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

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

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on January 2, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject.
5–Feb–15	IA	Cherokee	Cherokee County Rgnl	4/0182	12/18/14	RNAV (GPS) Y RWY 36, Orig-A.
5–Feb–15	KY	Lexington	Blue Grass	4/0198	12/22/14	RNAV (GPS) RWY 27, Orig.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0220	12/22/14	RNAV (RNP) Z RWY 36, Amdt 1.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0226	12/22/14	RNAV (RNP) Z RWY 31, Orig-C.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0228	12/22/14	RNAV (RNP) Z RWY 13, Orig-B.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0230	12/22/14	RNAV (GPS) Y RWY 13, Amdt 1B.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0232	12/22/14	RNAV (GPS) RWY 18, Amdt 1.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0233	12/22/14	ILS OR LOC RWY 36, Amdt 13.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0234	12/22/14	RNAV (GPS) Y RWY 36, Amdt 2.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0239	12/22/14	VOR OR TACAN RWY 18, Amdt 28.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0240	12/22/14	ILS OR LOC RWY 13, Amdt 27B.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0242	12/22/14	RNAV (GPS) Y RWY 31, Amdt 3A.
5–Feb–15	TX	Corpus Christi	Corpus Christi Intl	4/0243	12/22/14	LOC RWY 31, Amdt 8A.
5–Feb–15	MO	St Joseph	Rosecrans Memorial	4/0256	12/18/14	RNAV (GPS) RWY 31, Orig-A.
5–Feb–15	OH	Youngstown	Youngstown Elser Metro	4/0262	12/29/14	Takeoff Minimums and (Obstacle) DP, Amdt 1.
5–Feb–15	IA	Red Oak	Red Oak Muni	4/0270	12/29/14	RNAV (GPS) RWY 5, Amdt 1.
5–Feb–15	IA	Shenandoah	Shenandoah Muni	4/0274	12/29/14	VOR/DME RWY 12, Amdt 4.
5–Feb–15	IA	Sheldon	Sheldon Muni	4/0283	12/29/14	RNAV (GPS) RWY 33, Amdt 1.
5–Feb–15	IA	Spencer	Spencer Muni	4/0289	12/29/14	NDB RWY 30, Amdt 9.
5–Feb–15	IA	Spencer	Spencer Muni	4/0290	12/29/14	RNAV (GPS) RWY 18, Amdt 1.
5–Feb–15	IA	Spencer	Spencer Muni	4/0292	12/29/14	RNAV (GPS) RWY 30, Amdt 1.
5–Feb–15	IA	Spencer	Spencer Muni	4/0293	12/29/14	RNAV (GPS) RWY 36, Amdt 1.
5–Feb–15	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	4/0336	12/29/14	ILS OR LOC RWY 13, Amdt 2A.
5–Feb–15	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	4/0337	12/29/14	ILS OR LOC RWY 31, Amdt 25B.
5–Feb–15	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	4/0338	12/29/14	NDB RWY 35, Orig-E.
5–Feb–15	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	4/0341	12/29/14	VOR OR TACAN RWY 31, Amdt 26C.
5–Feb–15	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	4/0342	12/29/14	RNAV (GPS) RWY 13, Orig-B.
5–Feb–15	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	4/0343	12/29/14	VOR/DME OR TACAN RWY 13, Amdt 18B.
5–Feb–15	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	4/0345	12/29/14	NDB RWY 31, Amdt 23D.
5–Feb–15	IA	Sioux City	Sioux Gateway/Col Bud Day Field.	4/0346	12/29/14	NDB RWY 13, Amdt 15F.
5–Feb–15	CA	Santa Maria	Santa Maria Pub/Capt G Allan Hancock Fld.	4/0424	12/22/14	RNAV (GPS) RWY 30, Orig-B.
5–Feb–15	KS	Goodland	Renner Fld/Goodland Muni/	4/0431	12/29/14	RNAV (GPS) RWY 30, Amdt 1.
5–Feb–15	KS	Goodland	Renner Fld/Goodland Muni/	4/0432	12/29/14	VOR/DME RWY 30, Amdt 8.
5–Feb–15	KS	Goodland	Renner Fld/Goodland Muni/	4/0438	12/29/14	ILS OR LOC RWY 30, Amdt 2.
5–Feb–15	KS	Goodland	Renner Fld/Goodland Muni/	4/0441	12/29/14	VOR RWY 30, Amdt 9.
5–Feb–15	KS	Hill City	Hill City Muni	4/0442	12/23/14	RNAV (GPS) RWY 18, Amdt 1.
5–Feb–15	KS	Pittsburg	Atkinson Muni	4/0444	12/23/14	RNAV (GPS) RWY 16, Amdt 2A.
5–Feb–15	KS	Pittsburg	Atkinson Muni	4/0448	12/23/14	RNAV (GPS) RWY 4, Amdt 1B.
5–Feb–15	KS	Belleville	Belleville Muni	4/0452	12/29/14	RNAV (GPS) RWY 36, Orig.
5–Feb–15	CO	Pueblo	Pueblo Memorial	4/0491	12/22/14	VOR/DME RWY 26L, Orig.
5–Feb–15	KS	Norton	Norton Muni	4/0736	12/22/14	NDB RWY 16, Amdt 2.
5–Feb–15	KS	Norton	Norton Muni	4/0737	12/22/14	NDB RWY 34, Amdt 2.
5–Feb–15	KS	Norton	Norton Muni	4/0738	12/22/14	RNAV (GPS) RWY 16, Amdt 1.
5–Feb–15	KS	Norton	Norton Muni	4/0739	12/22/14	RNAV (GPS) RWY 34, Amdt 1.
5–Feb–15	IN	Marion	Marion Muni	4/0749	12/22/14	RNAV (GPS) RWY 15, Orig-A.
5–Feb–15	KS	Burlington	Coffey County	4/1228	12/23/14	RNAV (GPS) RWY 36, Orig.
5–Feb–15	KS	Burlington	Coffey County	4/1250	12/23/14	RNAV (GPS) RWY 18, Orig.
5–Feb–15	MN	Perham	Perham Muni	4/1256	12/23/14	RNAV (GPS) RWY 31, Amdt 1.
5–Feb–15	MN	Springfield	Springfield Muni	4/1262	12/23/14	RNAV (GPS) RWY 13, Orig.
5–Feb–15	MN	Springfield	Springfield Muni	4/1263	12/23/14	RNAV (GPS) RWY 31, Orig.
5–Feb–15	MN	Springfield	Springfield Muni	4/1264	12/23/14	VOR/DME RWY 13, Amdt 3.
5–Feb–15	MN	Moorhead	Moorhead Muni	4/1311	12/23/14	RNAV (GPS) RWY 30, Amdt 1.
5–Feb–15	MN	Orr	Orr Rgnl	4/1352	12/29/14	NDB RWY 13, Amdt 8A.
5–Feb–15	MN	Orr	Orr Rgnl	4/1353	12/29/14	RNAV (GPS) RWY 13, Orig-A.
5–Feb–15	MN	Worthington	Worthington Muni	4/1371	12/29/14	VOR RWY 18, Amdt 10.
5–Feb–15	MN	Worthington	Worthington Muni	4/1373	12/29/14	RNAV (GPS) RWY 29, Orig.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject.
5–Feb–15	MN	Worthington	Worthington Muni	4/1375	12/29/14	NDB RWY 29, Amdt 1.
5–Feb–15	MN	Worthington	Worthington Muni	4/1377	12/29/14	RNAV (GPS) RWY 18, Orig.
5–Feb–15	MN	Worthington	Worthington Muni	4/1385	12/29/14	ILS OR LOC RWY 29, Amdt 1.
5–Feb–15	MN	Paynesville	Paynesville Muni	4/1402	12/29/14	RNAV (GPS) RWY 29, Amdt 1.
5–Feb–15	MN	Paynesville	Paynesville Muni	4/1404	12/29/14	RNAV (GPS) RWY 11, Amdt 1.
5–Feb–15	MN	Park Rapids	Park Rapids Muni-Konshok Field.	4/1405	12/23/14	NDB RWY 31, Amdt 2.
5–Feb–15	MN	Park Rapids	Park Rapids Muni-Konshok Field.	4/1406	12/23/14	RNAV (GPS) RWY 31, Orig.
5–Feb–15	MN	Park Rapids	Park Rapids Muni-Konshok Field.	4/1411	12/23/14	ILS OR LOC RWY 31, Amdt 1B.
5–Feb–15	MN	Park Rapids	Park Rapids Muni-Konshok Field.	4/1412	12/23/14	VOR RWY 31, Amdt 14.
5–Feb–15	FL	Venice	Venice Muni	4/1521	12/29/14	RNAV (GPS) RWY 5, Orig-B.
5–Feb–15	FL	Venice	Venice Muni	4/1522	12/29/14	RNAV (GPS) RWY 13, Amdt 1B.
5–Feb–15	FL	Venice	Venice Muni	4/1523	12/29/14	RNAV (GPS) RWY 31, Amdt 1B.
5–Feb–15	VT	Morrisville	Morrisville-Stowe State	4/1529	12/22/14	RNAV (GPS) Y RWY 19, Amdt 1.
5–Feb–15	VT	Morrisville	Morrisville-Stowe State	4/1531	12/22/14	RNAV (GPS) Z RWY 19, Amdt 1.
5–Feb–15	MN	Pipestone	Pipestone Muni	4/1550	12/23/14	RNAV (GPS) RWY 18, Amdt 1.
5–Feb–15	MN	Pipestone	Pipestone Muni	4/1551	12/23/14	RNAV (GPS) RWY 36, Amdt 1.
5–Feb–15	MN	Rush City	Rush City Rgnl	4/1554	12/23/14	NDB RWY 34, Orig.
5–Feb–15	MN	Rush City	Rush City Rgnl	4/1556	12/23/14	RNAV (GPS) RWY 34, Orig.
5–Feb–15	MN	Ortonville	Ortonville Muni-Martinson Field.	4/1559	12/23/14	RNAV (GPS) RWY 34, Orig.
5–Feb–15	MN	Ortonville	Ortonville Muni-Martinson Field.	4/1560	12/23/14	NDB RWY 34, Amdt 2.
5–Feb–15	MO	Aurora	Jerry Sumners Sr Aurora Muni	4/1564	12/23/14	RNAV (GPS) RWY 18, Orig.
5–Feb–15	MO	Branson West	Branson West Muni—Emerson Field.	4/1565	12/23/14	RNAV (GPS) RWY 21, Amdt 1.
5–Feb–15	MO	Osage Beach	Grand Glaize-Osage Beach	4/1579	12/23/14	VOR RWY 32, Amdt 6A.
5–Feb–15	MO	Osage Beach	Grand Glaize-Osage Beach	4/1581	12/23/14	RNAV (GPS) RWY 32, Amdt 1.
5–Feb–15	MO	Lee's Summit	Lee's Summit Muni	4/1582	12/23/14	RNAV (GPS) RWY 11, Amdt 1.
5–Feb–15	MO	Lee's Summit	Lee's Summit Muni	4/1583	12/23/14	RNAV (GPS) RWY 36, Amdt 2.
5–Feb–15	MO	Lee's Summit	Lee's Summit Muni	4/1586	12/23/14	RNAV (GPS) RWY 18, Amdt 2.
5–Feb–15	MO	Lee's Summit	Lee's Summit Muni	4/1587	12/23/14	RNAV (GPS) RWY 29, Amdt 2.
5–Feb–15	MO	Sikeston	Sikeston Memorial Muni	4/1595	12/23/14	RNAV (GPS) RWY 2, Amdt 1.
5–Feb–15	MO	Sikeston	Sikeston Memorial Muni	4/1596	12/23/14	RNAV (GPS) RWY 20, Amdt 2.
5–Feb–15	MO	Sikeston	Sikeston Memorial Muni	4/1597	12/23/14	VOR RWY 20, Amdt 4.
5–Feb–15	MO	Sikeston	Sikeston Memorial Muni	4/1598	12/23/14	VOR/DME RWY 2, Amdt 3.
5–Feb–15	MO	Trenton	Trenton Muni	4/1610	12/23/14	RNAV (GPS) RWY 18, Orig.
5–Feb–15	MO	Trenton	Trenton Muni	4/1611	12/23/14	NDB RWY 18, Amdt 7B.
5–Feb–15	MO	Trenton	Trenton Muni	4/1612	12/23/14	RNAV (GPS) RWY 36, Orig.
5–Feb–15	MO	Trenton	Trenton Muni	4/1613	12/23/14	NDB RWY 36, Amdt 10.
5–Feb–15	ND	Cavalier	Cavalier Muni	4/1614	12/23/14	RNAV (GPS) RWY 34, Amdt 1.
5–Feb–15	ND	Linton	Linton Muni	4/1615	12/23/14	RNAV (GPS) RWY 27, Orig.
5–Feb–15	ND	Devils Lake	Devils Lake Rgnl	4/1616	12/23/14	VOR RWY 13, Amdt 1A.
5–Feb–15	ND	Devils Lake	Devils Lake Rgnl	4/1617	12/23/14	RNAV (GPS) RWY 21, Amdt 1A.
5–Feb–15	ND	Devils Lake	Devils Lake Rgnl	4/1618	12/23/14	RNAV (GPS) RWY 31, Amdt 1A.
5–Feb–15	ND	Devils Lake	Devils Lake Rgnl	4/1622	12/23/14	VOR RWY 31, Amdt 1A.
5–Feb–15	ND	Devils Lake	Devils Lake Rgnl	4/1624	12/23/14	RNAV (GPS) RWY 13, Amdt 1A.
5–Feb–15	NE	Hartington	Hartington Muni/Bud Becker Fld.	4/1627	12/22/14	RNAV (GPS) RWY 13, Orig.
5–Feb–15	NE	Hartington	Hartington Muni/Bud Becker Fld.	4/1630	12/22/14	RNAV (GPS) RWY 31, Orig.
5–Feb–15	NE	Pender	Pender Muni	4/1641	12/22/14	RNAV (GPS) RWY 33, Orig.
5–Feb–15	NE	Tecumseh	Tecumseh Muni	4/1642	12/22/14	RNAV (GPS) RWY 15, Orig.
5–Feb–15	NE	Tecumseh	Tecumseh Muni	4/1647	12/22/14	RNAV (GPS) RWY 33, Orig.
5–Feb–15	NE	Creighton	Creighton Muni	4/1648	12/22/14	RNAV (GPS) RWY 13, Orig.
5–Feb–15	NE	Creighton	Creighton Muni	4/1651	12/22/14	RNAV (GPS) RWY 31, Orig.
5–Feb–15	NE	Central City	Central City Muni—Larry Reineke Field.	4/1653	12/22/14	RNAV (GPS) RWY 34, Orig.
5–Feb–15	NE	Central City	Central City Muni—Larry Reineke Field.	4/1654	12/22/14	RNAV (GPS) RWY 16, Orig.
5–Feb–15	NE	Red Cloud	Red Cloud Muni	4/1655	12/23/14	RNAV (GPS) RWY 34, Orig.
5–Feb–15	NE	Harvard	Harvard State	4/1656	12/23/14	RNAV (GPS) RWY 17, Orig.
5–Feb–15	NE	Harvard	Harvard State	4/1657	12/23/14	RNAV (GPS) RWY 35, Amdt 1.
5–Feb–15	NE	Atkinson	Stuart-Atkinson Muni	4/1658	12/29/14	VOR/DME RWY 29, Amdt 1.
5–Feb–15	NE	Atkinson	Stuart-Atkinson Muni	4/1659	12/29/14	RNAV (GPS) RWY 29, Orig.
5–Feb–15	NE	Superior	Superior Muni	4/1660	12/23/14	RNAV (GPS) RWY 32, Orig.
5–Feb–15	NE	Scottsbluff	Western Nebraska Rgnl/William B Heilig Field.	4/1661	12/23/14	ILS OR LOC RWY 30, Amdt 10.
5–Feb–15	NE	Scottsbluff	Western Nebraska Rgnl/William B Heilig Field.	4/1662	12/23/14	RNAV (GPS) RWY 5, Amdt 1.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject.
5–Feb–15	NE	Scottsbluff	Western Nebraska Rgnl/William B Heilig Field.	4/1663	12/23/14	RNAV (GPS) RWY 30, Amdt 1.
5–Feb–15	NE	Beatrice	Beatrice Muni	4/1691	12/23/14	VOR RWY 36, Amdt 9.
5–Feb–15	NE	Burwell	Cram Field	4/1692	12/22/14	RNAV (GPS) RWY 15, Orig.
5–Feb–15	NE	Burwell	Cram Field	4/1693	12/22/14	NDB RWY 15, Amdt 1.
5–Feb–15	NE	Chadron	Chadron Muni	4/1697	12/23/14	RNAV (GPS) RWY 29, Orig.
5–Feb–15	NE	Chadron	Chadron Muni	4/1698	12/23/14	NDB RWY 20, Amdt 12A.
5–Feb–15	NE	Chadron	Chadron Muni	4/1702	12/23/14	RNAV (GPS) RWY 20, Amdt 2.
5–Feb–15	NE	Kearney	Kearney Rgnl	4/1704	12/23/14	RNAV (GPS) RWY 13, Orig.
5–Feb–15	NE	Kearney	Kearney Rgnl	4/1705	12/23/14	VOR RWY 13, Amdt 2A.
5–Feb–15	NE	Fremont	Fremont Muni	4/1707	12/23/14	VOR/DME RWY 14, Amdt 3.
5–Feb–15	NE	Fremont	Fremont Muni	4/1708	12/23/14	RNAV (GPS) RWY 14, Amdt 2.
5–Feb–15	NE	Fremont	Fremont Muni	4/1709	12/23/14	RNAV (GPS) RWY 32, Orig.
5–Feb–15	NE	Grant	Grant Muni	4/1712	12/23/14	VOR/DME RWY 15, Amdt 2.
5–Feb–15	NE	Hastings	Hastings Muni	4/1713	12/23/14	RNAV (GPS) RWY 4, Orig.
5–Feb–15	NE	Hastings	Hastings Muni	4/1714	12/23/14	VOR RWY 4, Amdt 6.
5–Feb–15	NE	Hastings	Hastings Muni	4/1715	12/23/14	RNAV (GPS) RWY 32, Orig.
5–Feb–15	NE	Hastings	Hastings Muni	4/1716	12/23/14	VOR RWY 32, Amdt 14.
5–Feb–15	NE	Kimball	Kimball Muni/Robert E Arraj Field.	4/1717	12/23/14	RNAV (GPS) RWY 28, Amdt 1.
5–Feb–15	NE	North Platte	North Platte Rgnl Airport Lee Bird Field.	4/1720	12/23/14	RNAV (GPS) RWY 30, Amdt 2.
5–Feb–15	NE	North Platte	North Platte Rgnl Airport Lee Bird Field.	4/1721	12/23/14	ILS OR LOC RWY 30, Amdt 7.
5–Feb–15	NE	North Platte	North Platte Rgnl Airport Lee Bird Field.	4/1723	12/23/14	RNAV (GPS) RWY 35, Amdt 1.
5–Feb–15	NE	North Platte	North Platte Rgnl Airport Lee Bird Field.	4/1724	12/23/14	RNAV (GPS) RWY 12, Amdt 1.
5–Feb–15	NE	Wayne	Wayne Muni/Stan Morris Fld	4/1725	12/23/14	RNAV (GPS) RWY 23, Amdt 1.
5–Feb–15	NE	Ogallala	Searle Field	4/1728	12/23/14	VOR RWY 26, Amdt 6.
5–Feb–15	NE	Ogallala	Searle Field	4/1729	12/23/14	RNAV (GPS) RWY 26, Amdt 2.
5–Feb–15	NE	Ogallala	Searle Field	4/1730	12/23/14	RNAV (GPS) RWY 31, Orig.
5–Feb–15	NE	Ogallala	Searle Field	4/1731	12/23/14	VOR/DME RWY 26, Amdt 1.
5–Feb–15	SD	Sioux Falls	Joe Foss Field	4/1794	12/22/14	RNAV (GPS) RWY 33, Amdt 1.
5–Feb–15	SD	Sioux Falls	Joe Foss Field	4/1795	12/22/14	VOR/DME OR TACAN RWY 33, Amdt 12C.
5–Feb–15	SD	Sioux Falls	Joe Foss Field	4/1796	12/22/14	RNAV (GPS) RWY 3, Amdt 1A.
5–Feb–15	SD	Sioux Falls	Joe Foss Field	4/1797	12/22/14	RNAV (GPS) RWY 15, Amdt 1.
5–Feb–15	SD	Sioux Falls	Joe Foss Field	4/1798	12/22/14	VOR OR TACAN RWY 15, Amdt 21C.
5–Feb–15	SD	Sioux Falls	Joe Foss Field	4/1799	12/22/14	ILS OR LOC RWY 3, Amdt 27E.
5–Feb–15	SD	Hot Springs	Hot Springs Muni	4/1801	12/23/14	RNAV (GPS) RWY 19, Orig.
5–Feb–15	SD	Lemmon	Lemmon Muni	4/1805	12/23/14	RNAV (GPS) RWY 29, Orig.
5–Feb–15	SD	Madison	Madison Muni	4/1806	12/23/14	RNAV (GPS) RWY 33, Orig.
5–Feb–15	SD	Madison	Madison Muni	4/1808	12/23/14	RNAV (GPS) RWY 15, Orig.
5–Feb–15	SD	Miller	Miller Muni	4/1810	12/23/14	RNAV (GPS) RWY 15, Amdt 1.
5–Feb–15	SD	Philip	Philip	4/1813	12/23/14	RNAV (GPS) RWY 30, Orig.
5–Feb–15	SD	Rapid City	Rapid City Rgnl	4/1814	12/23/14	VOR OR TACAN RWY 32, Amdt 24F.
5–Feb–15	SD	Rapid City	Rapid City Rgnl	4/1815	12/23/14	RNAV (GPS) RWY 23, Orig.
5–Feb–15	SD	Rapid City	Rapid City Rgnl	4/1816	12/23/14	RNAV (GPS) RWY 5, Orig.
5–Feb–15	SD	Rapid City	Rapid City Rgnl	4/1817	12/23/14	RNAV (GPS) RWY 32, Amdt 1B.
5–Feb–15	GA	Atlanta	Hartsfield—Jackson Atlanta Intl.	4/3067	12/29/14	RNAV (GPS) RWY 9L, Amdt 4.
5–Feb–15	GA	Atlanta	Hartsfield—Jackson Atlanta Intl.	4/3068	12/29/14	RNAV (GPS) PRM RWY 9L (SIMULTANEOUS CLOSE PARALLEL), Orig.
5–Feb–15	NH	Berlin	Berlin Rgnl	4/4988	12/18/14	RNAV (GPS) RWY 18, Orig.
5–Feb–15	NH	Berlin	Berlin Rgnl	4/4989	12/18/14	VOR B, Amdt 3.
5–Feb–15	NH	Berlin	Berlin Rgnl	4/4990	12/18/14	VOR/DME RWY 18, Amdt 2.
5–Feb–15	IA	Boone	Boone Muni	4/9745	12/29/14	RNAV (GPS) RWY 33, Amdt 1.
5–Feb–15	VA	Richmond/Ashland	Hanover County Muni	4/9757	12/22/14	RNAV (GPS) RWY 16, Orig-C.
5–Feb–15	VA	Richmond/Ashland	Hanover County Muni	4/9758	12/22/14	VOR RWY 16, Amdt 2C.
5–Feb–15	VA	Richmond/Ashland	Hanover County Muni	4/9759	12/22/14	LOC RWY 16, Amdt 3C.
5–Feb–15	IA	Burlington	Southeast Iowa Rgnl	4/9838	12/29/14	VOR/DME RWY 12, Amdt 6A.
5–Feb–15	IA	Des Moines	Des Moines Intl	4/9859	12/29/14	ILS OR LOC RWY 31, ILS RWY 31 (CAT II & III), Amdt 23A.
5–Feb–15	IA	Pocahontas	Pocahontas Muni	4/9889	12/29/14	RNAV (GPS) RWY 12, Orig-B.
5–Feb–15	IA	Pocahontas	Pocahontas Muni	4/9890	12/29/14	NDB RWY 12, Amdt 5B.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30997; Amdt. No. 3625]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective January 30, 2015. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 30, 2015.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC, 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

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

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

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

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

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

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on January 2, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 5 February 2015

Fort Lauderdale, FL, Fort Lauderdale Executive, ILS OR LOC RWY 9, Amdt 5A
Fort Lauderdale, FL, Fort Lauderdale Executive, RNAV (GPS) RWY 9, Amdt 2A
Fort Lauderdale, FL, Fort Lauderdale Executive, RNAV (GPS) RWY 27, Amdt 2B
Orlando, FL, Orlando Intl, ILS OR LOC RWY 17L, ILS RWY 17L (CAT II), ILS RWY 17L (SA CAT I), Amdt 2
Orlando, FL, Orlando Intl, ILS OR LOC RWY 18R, Amdt 10
Orlando, FL, Orlando Intl, ILS OR LOC RWY 35L, ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), ILS RWY 35L (SA CAT I), Amdt 7
Orlando, FL, Orlando Intl, ILS OR LOC RWY 35R, ILS RWY 35R (CAT II), ILS RWY 35R (SA CAT I), Amdt 2
Orlando, FL, Orlando Intl, ILS OR LOC RWY 36R, ILS RWY 36R (CAT II), ILS RWY 36R (CAT III), ILS RWY 36R (SA CAT I), Amdt 10
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 17L, Amdt 1
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 17R, Orig-C
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 18L, Amdt 1
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 18R, Amdt 1
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 35L, Amdt 1
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 35R, Amdt 1
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 36L, Amdt 1
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 36R, Amdt 1
Punta Gorda, FL, Punta Gorda, VOR RWY 4, Orig
Fort Stewart (Hinesville), GA, Wright AAF (Fort Stewart)/Midcoast Rgnl, NDB RWY 33R, Orig-B
Fort Stewart (Hinesville), GA, Wright AAF (Fort Stewart)/Midcoast Rgnl, RNAV (GPS) RWY 6L, Orig-B
Fort Stewart (Hinesville), GA, Wright AAF (Fort Stewart)/Midcoast Rgnl, RNAV (GPS) RWY 33R, Orig-B
Helena, MT, Helena Rgnl, ILS OR LOC Z RWY 27, Amdt 2
Brookneal, VA, Brookneal/Campbell County, RNAV (GPS) RWY 6, Orig
Brookneal, VA, Brookneal/Campbell County, RNAV (GPS) RWY 24, Amdt 1

Effective 5 March 2015

Webster City, IA, Webster City Muni, RNAV (GPS) RWY 14, Orig
Webster City, IA, Webster City Muni, RNAV (GPS) RWY 32, Amdt 2
Frederick, MD, Frederick Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Memphis, TN, Memphis Intl, ILS OR LOC RWY 18R, Amdt 14C
Memphis, TN, Memphis Intl, RNAV (GPS) Z RWY 18R, Amdt 2C
Memphis, TN, Memphis Intl, RNAV (RNP) X RWY 18R, Orig-D
Memphis, TN, Memphis Intl, RNAV (RNP) Y RWY 18R, Orig-D
Denton, TX, Denton Muni, RNAV (GPS) RWY 18, Orig-A

[FR Doc. 2015–01034 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–402]

Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cannabinoids Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this final order to temporarily schedule three synthetic cannabinoids (SCs) into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act (CSA). The substances are: (1) *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (''AB–CHMINACA''); (2) *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (''AB–PINACA''); and (3) [1-(5-fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (''THJ–2201''). This action is based on a finding by the Administrator that the placement of these synthetic cannabinoids and their optical, positional, and geometric isomers, salts, and salts of isomers into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, import, export, engage in research, or possess), or propose to handle these SCs.

DATES: This final order is effective January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a

substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the DEA, 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the DEA to notify the Department of Health and Human Services (HHS) of the intent to temporarily place a substance into schedule I of the CSA.[1] The DEA transmitted notice of the intent to place AB–CHMINACA, AB–PINACA, and THJ–2201 in schedule I on a temporary basis to the Assistant Secretary by letter dated September 17, 2014. The Assistant Secretary responded to this notice by letter dated September 30, 2014, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for AB–CHMINACA, AB–PINACA, or THJ–2201. The Assistant Secretary also stated that HHS has no objection to the temporary placement of AB–CHMINACA, AB–PINACA, and THJ–2201 into schedule I of the CSA.

The DEA has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). AB–CHMINACA, AB–PINACA, and THJ–2201 are not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for AB–CHMINACA, AB–PINACA, or THJ–2201 under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the scheduling of AB–CHMINACA, AB–PINACA, and THJ–2201 in schedule I on a temporary basis is necessary to avoid an imminent hazard to public safety, and as required by 21 U.S.C. 811(h)(1)(A), a notice of intent to temporarily schedule these three synthetic cannabinoids (SCs) was published in the **Federal Register** on December 19, 2014. 79 FR 75767.

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1). Available data and information for AB–CHMINACA, AB–PINACA, and THJ–2201 indicate that these three SCs have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

Synthetic Cannabinoids

SCs are chemicals synthesized in laboratories and mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana. These chemicals, such as CP–47,497 and cannabicyclohexanol (both designed in the 1980s and currently controlled pursuant to the Food and Drug Administration Safety and Innovation Act (FDASIA), Pub. L. 112–144), were initially used as research tools to investigate the biological mechanisms in the cannabinoid system and to develop novel therapies for various clinical conditions. Other SCs including JWH–018, JWH–073, and JWH–200 (all permanently controlled pursuant to FDASIA) were synthesized in the mid-1990s and studied to advance the understanding of drug-receptor interactions in the cannabinoid system.

SCs were marketed in several European countries as ''herbal incense'' before the initial encounter in the United States by U.S. Customs and Border Protection (CBP) in November 2008. In 2009, their use began increasing in the United States, with law enforcement encounters describing SCs laced on plant material and being abused for their psychoactive properties. Forensic analyses by the DEA and other Federal, State, and local laboratories have identified multiple variations in both the type and amount of SCs applied to the plant material.

As observed by the DEA and CBP, SCs originate from foreign sources, including China and other countries in Southeast Asia. Bulk substances are smuggled via common carrier into the United States and find their way to clandestine manufacturing operations located in residential neighborhoods, garages, warehouses, and other similar destinations throughout the country. The powder form of SCs is typically dissolved in solvents (*e.g.,* acetone) before being applied to a green plant material or dissolved in a propellant intended for use in e-cigarette devices.

SCs are marketed under hundreds of different brand names, including ''Spice,'' ''K2,'' ''Blaze,'' ''Red X Dawn,'' ''Paradise,'' ''Demon,'' ''Black Magic,'' ''Spike,'' ''Mr. Nice Guy,'' ''Ninja,'' ''Zohai,'' ''Yucatan,'' ''Fire,'' ''Crazy Clown,'' ''Mojo,'' ''Black Mamba,'' ''Black Voodoo,'' ''Scooby Snax,'' ''Bizzaro,'' and many others. In addition, various ''new generations'' of SCs reflect the same or similar product labels while yielding a higher intensity and longer-lasting highs while the user remains unaware of the package's exact contents.

The drug products laced with SCs are often sold under the guise of ''herbal incense,'' ''potpourri,'' etc., using various product names and routinely labeled ''not for human consumption.'' Additionally, these products are marketed as a ''legal high'' or ''legal alternative to marijuana'' and are readily available over the Internet, in head shops, and in convenience stores. There is an incorrect assumption that these products are safe and further, that mislabeling these products as ''not for human consumption'' is a legal defense to criminal prosecution.

These substances have no accepted medical use in the United States and have been reported to produce adverse health effects in humans while having a negative effect on communities. Acute and chronic abuse of SCs in general have been linked to adverse health

[1] Because the Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations, for purposes of this Final Order, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.'' As set forth in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Assistant Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, March 8, 1985.

effects including signs of addiction and withdrawal, numerous reports of emergency room admissions resulting from their abuse, overall toxicity, and death.

AB–CHMINACA, AB–PINACA, and THJ–2201 are SCs that have pharmacological effects similar to the schedule I hallucinogen THC and other temporarily and permanently controlled schedule I substances. With no approved medical use in treatment in the United States and limited safety or toxicological information, AB–CHMINACA, AB–PINACA, and THJ–2201 have emerged on the illicit drug market and are being abused for their psychoactive properties. The DEA's analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under docket number DEA–402.

Factor 4. History and Current Pattern of Abuse

SCs were initially developed over the last 30 years as part of research efforts to investigate the cannabinoid system. SCs intended for illicit use were first reported in the United States in a November 2008 encounter, when a shipment of ''Spice'' was seized and analyzed by CBP in Dayton, Ohio, and later identified as containing JWH–018. At approximately the same time, in December 2008, JWH–018 and cannabicyclohexanol (CP–47,497 C8 homologue) were identified by German forensic laboratories. Since then, many other SCs have been found applied on plant material and encountered as drug products. Beginning in January 2010, the popularity of these cannabinoids and their associated products appears to have increased in the United States as evidenced by seizure exhibits and public health and media reports.

Numerous SCs have previously been identified as product adulterants, and law enforcement officials have seized bulk amounts of these substances.[2] The first SCs identified as being abused include JWH–018, JWH–073, JWH–200, CP–47,497, and CP–47,497 C8 homologue, followed shortly thereafter by new generations of SCs including UR–144, XLR11, AKB48, PB–22, 5F–PB–22, AB–FUBINACA, ADB–PINACA, and numerous others that vary only slightly in chemical structure. JWH–018, JWH–073, JWH–200, CP–47,497, and CP–47,497 C8 homologue were temporarily scheduled on March 1, 2011, 76 FR 11075, and later permanently placed into schedule I by section 1152 of FDASIA on July 9, 2012. Section 1152 of FDASIA amended the CSA by placing cannabimimetic agents and 26 specific substances (including 15 SCs, 2 synthetic cathinones, and 9 synthetic phenethylamines of the 2C-series) into schedule I. UR–144, XLR11, and AKB48 were temporarily scheduled on May 16, 2013. 78 FR 28735. PB–22, 5F–PB–22, AB–FUBINACA, and ADB–PINACA were temporarily scheduled on February 10, 2014. 79 FR 7577.

Recently, another generation of SCs including AB–CHMINACA, AB–PINACA, and THJ–2201 has been encountered. AB–CHMINACA, AB–PINACA, and THJ–2201 are not included among the 15 SCs that are specifically controlled under FDASIA, and do not fall under the definition of ''cannabimimetic agents'' as provided under FDASIA. Furthermore, as detailed in reports, law enforcement and public health officials are encountering the abuse of these substances and products laced with these substances, which are commonly marketed under the guise of being a ''legal high'' with a disclaimer that the products are ''not for human consumption.''

As with the older generation of SCs, the major concern of public health officials and medical professionals regarding these new products is the targeting and direct marketing toward adolescents and youth. This is supported by law enforcement encounters and reports from emergency rooms (see Factor 6 of Background Information and Evaluation of ''Three Factor Analysis'' (Factors 4, 5, and 6) for Temporary Scheduling). However, media reports indicate that all age groups abuse these substances and related products. Additionally, law enforcement has been encountering new variations of SCs in liquid form. The liquids contain one or more SCs, including AB–CHMINACA and AB–PINACA. Users have been identified applying the liquid to hookahs (an instrument for vaporizing and smoking a given material whereby the smoke or vapor passes through a water basin prior to inhalation), vaporizers (also known as ''vaping'' or using an ''e-cigarette,'' which allows the user to administer a liquid to be aerosolized and then inhaled), and hookah pens (a type of vaporizer, often much smaller and intended for increased discretion while smoking). As with conventional illicit manufacturing of SC products, liquid preparations of these substances do not adhere to any manufacturing standards with regard to dosage, the substance(s) included, purity, or contamination. It is therefore important to note that following manufacturing principles or standards would not eliminate the adverse effects observed with SC products and SCs would still be considered a threat to public safety.

Factor 5. Scope, Duration and Significance of Abuse

Despite multiple scheduling actions undertaken by the DEA in an attempt to safeguard the public from the adverse effects and safety issues associated with SCs, encounters by law enforcement and health care professionals demonstrate the continued abuse of these substances and their associated products. With the passing of each Federal control action, clandestine drug manufacturers and suppliers are adapting at an alarmingly quick pace to switch the ingredients to new, non-controlled variations of SCs. Exposure incidents involving SCs continue to be documented by poison control centers in the United States as the abuse of these substances remain a threat to both the short- and long-term public health and safety. Exposures to SCs were first reported to the American Association of Poison Control Centers (AAPCC) in 2011. Recently, the number of AAPCC exposure reports has begun to increase, demonstrating the dangerous health effects observed involving these chemicals. Exposures for August 2014 (442) were the highest received in a monthly period by the AAPCC since July 2012 (when there were 459). As of November 30, 2014, the AAPCC has received approximately 3,359 calls involving exposure to SCs for 2014.

The following information details information obtained through STRIDE[3] and NFLIS,[4] including the number of exhibits/reports, dates of first encounter, and locations of those encounters where available:[5]

For AB–CHMINACA, STRIDE contained 21 exhibits, with the first encounter in March 2014. NFLIS contained 586 reports, with the first encounter in February 2014, and locations of all encounters spanning Arkansas, Arizona, California, Colorado, Georgia, Iowa, Indiana, Kansas,

[2] While seizure evidence is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, December 12, 2011.

[3] System to Retrieve Information from Drug Evidence (STRIDE) is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from the DEA, other Federal agencies, and law enforcement agencies. STRIDE was last queried on October 1, 2014. Note that reporting via STRIDE ceased on September 30, 2014.

[4] National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by state and local forensic laboratories in the United States. NFLIS was last queried on November 25, 2014.

[5] *Supra* note 2.

Kentucky, Louisiana, Missouri, North Dakota, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, and Wisconsin.

For AB–PINACA, STRIDE contained 245 exhibits, with the first encounter in June 2013. NFLIS contained 3,783 reports, with the first encounter in March 2013, and locations of all encounters spanning Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, North Dakota, Nebraska, New Hampshire, New Jersey, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, West Virginia, and Wyoming.

For THJ–2201, STRIDE contained 65 exhibits, with the first encounter in September 2013. NFLIS contained 220 reports, with the first encounter in January 2014, and locations of all encounters spanning Arkansas, Arizona, Connecticut, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Minnesota, Missouri, North Dakota, Nebraska, New Hampshire, New Jersey, Ohio, Pennsylvania, Tennessee, and Wisconsin.

Factor 6. What, if Any, Risk There is to the Public Health

AB–PINACA has been for sale on the illicit drug market as early as March 2013. Meanwhile, THJ–2201 was first observed in September 2013, and AB–CHMINACA was first observed in February 2014. From December 2013 through September 2014, CBP reported select encounters of these substances with most shipments originating in China and intended for destinations within the United States. Specifically, there were 17 seizures of AB–CHMINACA involving 15.825 kilograms total; 4 seizures of AB–PINACA 6 kilograms total; and 6 seizures of THJ–2201 involving 5.5 kilograms total (see Three Factor Analysis). Additionally, the DEA has reported multiple encounters of large quantities of AB–CHMINACA, AB–PINACA and THJ–2201 that have been confirmed by forensic laboratories (STRIDE and/or NFLIS).

From October 2013 to September 2014, multiple deaths and severe overdoses occurred involving AB–CHMINACA and AB–PINACA. Adverse effects reported from these incidences have included: Seizures, coma, severe agitation, loss of motor control, loss of consciousness, difficulty breathing, altered mental status, and convulsions that in some cases resulted in death. There have been multiple overdose reports involving AB–CHMINACA, AB–PINACA, or a combination of both substances. In addition, there have been at least four documented deaths involving AB–CHMINACA and three documented deaths involving AB–PINACA.

Since abusers obtain these drugs through unknown sources, the identity and purity of these substances is uncertain and inconsistent, thus posing significant adverse health risks to users. Because the three SCs share pharmacological similarities with schedule I substances such as Δ9–THC, JWH–018, and other temporarily and permanently controlled schedule I substances, AB–CHMINACA, AB–PINACA, and THJ–2201 pose a risk to the abuser. Furthermore, despite being encountered on the illicit drug market and having no accepted medical use in treatment within the United States, these products continue to be easily available and abused across age groups.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

Based on the data and information summarized above, the continued uncontrolled manufacturing, distribution, importation, exportation, and abuse of AB–CHMINACA, AB–PINACA, and THJ–2201 pose an imminent hazard to the public safety. Furthermore, the DEA is not aware of any currently accepted medical uses for these SCs in the United States.

A substance meeting the statutory requirements for temporary scheduling under 21 U.S.C. 811(h)(1) may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for AB–CHMINACA, AB–PINACA, and THJ–2201 indicate that these three SCs have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the DEA, through a letter dated September 17, 2014, notified the Assistant Secretary of the DEA's intention to temporarily place these three SCs in schedule I.

Conclusion

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein set forth the grounds for her determination that it is necessary to temporarily place three synthetic cannabinoids, AB–CHMINACA, AB–PINACA, and THJ–2201 into schedule I of the CSA, and hereby finds that placement of these synthetic cannabinoids into schedule I of the CSA is warranted in order to avoid an imminent hazard to the public safety.

Because the Administrator hereby finds that it is necessary to temporarily place these synthetic cannabinoids into schedule I to avoid an imminent hazard to the public safety, the final order temporarily scheduling these substances will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Requirements for Handling

Upon the effective date of this final order, AB–CHMINACA, AB–PINACA, and THJ–2201 are subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importation, exportation, conduct of instructional activities, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research, conducts instructional activities with, or possesses), or desires to handle, AB–CHMINACA, AB–PINACA, or THJ–2201, must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312 as of January 30, 2015. Any person who currently handles AB–CHMINACA, AB–PINACA, or THJ–2201, and is not

registered with the DEA, must submit an application for registration and may not continue to handle AB–CHMINACA, AB–PINACA, or THJ–2201 as of January 30, 2015, unless the DEA has approved that application for registration, pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA.

2. *Security.* AB–CHMINACA, AB–PINACA, and THJ–2201are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93, as of January 30, 2015.

3. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of AB–CHMINACA, AB–PINACA, and THJ–2201 must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302 as of January 30, 2015. Current DEA registrants shall have 30 calendar days from January 30, 2015, to comply with all labeling and packaging requirements.

4. *Inventory.* Every DEA registrant who possesses any quantity of AB–CHMINACA, AB–PINACA, or THJ–2201 on the effective date of this order, must take an inventory of all stocks of these substances on hand as of January 30, 2015, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11 (a) and (d). Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements.

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including AB–CHMINACA, AB–PINACA, and THJ–2201) on hand on a biennial basis, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

5. *Records.* All DEA registrants must maintain records with respect to AB–CHMINACA, AB–PINACA, or THJ–2201 pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, 1307, and 1312 as of January 30, 2015. Current DEA registrants authorized to handle AB–CHMINACA, AB–PINACA, or THJ–2201 shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

6. *Reports.* All DEA registrants who manufacture or distribute AB–CHMINACA, AB–PINACA, or THJ–2201must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304, 1307, and 1312 as of January 30, 2015.

7. *Order Forms.* All registrants who distribute AB–CHMINACA, AB–PINACA, or THJ–2201must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of January 30, 2015.

8. *Importation and Exportation.* All importation and exportation of AB–CHMINACA, AB–PINACA, or THJ–2201must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of January 30, 2015.

9. *Quota.* Only registered manufacturers may manufacture AB–CHMINACA, AB–PINACA, or THJ–2201 in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

10. *Liability.* Any activity involving AB–CHMINACA, AB–PINACA, or THJ–2201 not authorized by, or in violation of the CSA, occurring as of January 30, 2015, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety. Further, the DEA believes that this temporary scheduling action final order is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Pursuant to section 808(2) of the Congressional Review Act (CRA), ''any rule for which an agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.'' 5 U.S.C. 808(2). It is in the public interest to schedule these substances immediately because they pose a public health risk. This temporary scheduling action is taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie 21 U.S.C. 811(h), that is, the DEA's need to move quickly to place these substances into schedule I because they pose an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order shall take effect immediately upon its publication.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control,

Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Amend § 1308.11, by adding paragraphs (h)(29) through (31) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(29) *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers—7031 (Other names: AB–CHMINACA).

(30) *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers—7023 (Other names: AB–PINACA).

(31) [1-(5-fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone, its optical, positional, and geometric isomers, salts, and salts of isomers—7024 (Other names: THJ–2201).

Dated: January 23, 2015.

Michele M. Leonhart,

Administrator.

[FR Doc. 2015–01776 Filed 1–29–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

RIN 2135–AA37

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges currently being levied by the SLSMC in Canada. The changes affect the tolls for commercial vessels and are applicable only in Canada. For consistency, because these are under international agreement joint regulations, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make the U.S. version of the amendments effective upon publication. (See **SUPPLEMENTARY INFORMATION**.)

DATES: This rule is effective on January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Carrie Mann Lavigne, Chief Counsel, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, New York 13662; 315/764–3200.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls (Schedule of Fees and Charges in Canada) in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising 33 CFR 402.11, ''Schedule of tolls'', to reflect the fees and charges levied by the SLSMC in Canada and to make corrections to various sections. The changes affect the tolls for commercial vessels and are applicable only in Canada. The collection of tolls by the SLSDC on commercial vessels transiting the U.S. locks is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice or comment is necessary on these amendments.

Regulatory Notices: Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478) or you may visit *www.regulations.gov.*

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

I certify this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relate to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of the human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, dated August 4, 1999, and has determined that this rule does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4) and 988, as amended; 49 CFR 1.52.

■ 2. In § 402.5, revise paragraph (c) to read as follows:

§ 402.5 New Business Incentive Program.

* * * * *

(c) A commodity/origin/destination combination that qualifies as New Business on or before the 30th day of September in any navigation season continues to qualify as New Business in the two consecutive navigation seasons immediately following the then current navigation season.

* * * * *

■ 3. In § 402.7, redesignate current paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5), respectively, and add a new paragraph (a)(3) to read as follows:

§ 402.7 Service Incentive Program.

(a) * * *

(3) The service must not be limited to the movement of one specific commodity;

* * * * *

■ 4. Revise § 402.11 to read as follows:

§ 402.11 Schedule of tolls.

Column 1 Item description of charges	Column 2 Rate ($) Montreal to or from Lake Ontario (5 locks)	Column 3 Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
1. Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
(1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time [1].	0.1040	0.1665.
(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
(*a*) bulk cargo	1.0781	0.7359.
(*b*) general cargo	2.5978	1.1777.
(*c*) steel slab	2.3511	0.8431.
(*d*) containerized cargo	1.0781	0.7359.
(*e*) government aid cargo	n/a	n/a.
(*f*) grain	0.6624	0.7359.
(*g*) coal	0.6624	0.7359.
(3) a charge per passenger per lock	1.6153	1.6153.
(4) a lockage charge per Gross Registered Ton of the vessel, as defined in item 1(1), applicable whether the ship is wholly or partially laden, or is in ballast, for transit of the Welland Canal in either direction by cargo ships,	n/a	0.2772.
Up to a maximum charge per vessel	n/a	3,877.00.
2. Subject to item 3, for partial transit of the Seaway	20 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).	13 per cent per lock of the applicable charge under items 1(1), 1(2) and 1(4) plus the applicable charge under items 1(3).
3. Minimum charge per vessel per lock transited for full or partial transit of the Seaway.	26.92	26.92.
4. A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes [2].	30.00 [3]	30.00.
5. Under the New Business Initiative Program, for cargo accepted as New Business, a percentage rebate on the applicable cargo charges for the approved period.	20%	20%.
6. Under the Volume Rebate Incentive program, a retroactive percentage rebate on cargo tolls on the incremental volume calculated based on the pre-approved maximum volume.	10%	10%.
7. Under the New Service Incentive Program, for New Business cargo moving under an approved new service, an additional percentage refund on applicable cargo tolls above the New Business rebate.	20%	20%.

[1] Or under the US GRT for vessels prescribed prior to 2002.

[2] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $30 U.S. or $30 Canadian per lock. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

[3] $5.00 discount per lock applicable on ticket purchased for Canadian locks via paypal.

Issued at Washington, DC, on January 26, 2015.

Saint Lawrence Seaway Development Corporation.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2015–01725 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–61–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[DA 14–1892]

Open Video System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Office of the Managing Director (OMD) makes nonsubstantive, editorial revisions to correct outdated cross-references in the Federal Communications Commission's Open Video System (OVS) rules.

DATES: Effective March 2, 2015.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Office of the Managing Director's *Order,* DA 14–1892, adopted and released on December 23, 2014. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act 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). The Commission will file a nonsubstantive modification to the information collection that contains §§ 76.1601, 76.1607, 76.1617, and 76.1708 (OMB 3060–0649).

Synopsis

I. Discussion

1. By this Order, the Office of the Managing Director (OMD) makes nonsubstantive, editorial revisions to correct outdated cross-references in the Federal Communications Commission's open video system (OVS) rules. These nonsubstantive revisions are part of the Commission's ongoing examination and improvement of its processes and procedures. Specifically, § 76.1506(g) of the Commission's rules applies to OVS operators the cable operator notification requirements contained in § 76.58.[1] While § 76.58 contained those notification requirements when § 76.1506(g) was adopted,[2] in 1999 the Commission deleted § 76.58 and moved its contents to new sections of the Code of Federal Regulations (CFR) with the minor modifications discussed below.[3] Accordingly, in this Order we correct the outdated cross-references in § 76.1506(g).

2. These revisions update references to obsolete rule sections. Accordingly, we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose.[4] The Commission's rules provide its Managing Director, or his or her designee, with ''delegated authority to make nonsubstantive, editorial revisions of the Commission's rules and regulations upon approval of the bureau or staff office primarily responsible for the particular part or section involved.'' [5] Updating the cross-references in § 76.1506(g) is a nonsubstantive change, and the Media Bureau has approved the corrections made herein.

3. Upon the deletion of § 76.58 of the Commission's rules in 1999, the Commission moved the contents of § 76.58(a) to § 76.1601.[6] The Commission also moved the contents of § 76.58(b), (d) and (e) to § 76.1617.[7] Further, the Commission moved the contents of § 76.58(c) to § 76.1607 and part of § 76.1708(a).[8] Additionally, the Commission moved the note to § 76.58 to § 76.1601.[9] However, § 76.1506(g) continues to cross-reference deleted § 76.58.

4. We revise § 76.1506(g) of the Commission's rules to eliminate cross-references to deleted § 76.58 and replace those references with the updated cable rule sections. We need not revise FCC Form 1275, Certification for Open Video Systems, because that form does not mention deleted § 76.58. In addition, to make § 76.1506(g) easier to read now that it will cross-reference multiple rule sections instead of a single rule section, we make editorial revisions by merging the three former sentences into a single sentence. Section 76.1506(g) will now read, ''Any provision of §§ 76.1601, 76.1607, 76.1617, or 76.1708(a) (second sentence) that refers to a 'cable operator,' 'cable system,' or 'principal headend' shall apply, respectively, to an open video system operator, to an open video system, or to the equivalent of the principal headend for an open video system.'' The corrections discussed herein are nonsubstantive, editorial revisions that the Media Bureau has approved, and OMD thus has authority to implement them pursuant to § 0.231(b).[10]

II. Procedural Matters

A. Regulatory Flexibility Act

5. Because we adopt this Order without notice and comment, the Regulatory Flexibility Act (RFA) does not apply.[11]

B. Final Paperwork Reduction Act of 1995 Analysis

6. The Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will file a nonsubstantive modification to the information collection that contains §§ 76.1601, 76.1607, 76.1617, and 76.1708 (OMB 3060–0649).

C. Congressional Review Act

7. The Commission will send a copy of the 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).

[1] 47 CFR 76.1506(g).

[2] *See Open Video Systems,* 61 FR 28698 (June 5, 1996).

[3] *See 1998 Biennial Regulatory Review—Streamlining of Cable Television Services, part 76 Public File and Notice Requirements,* Report and Order, 14 FCC Rcd 4653 (1999) (*1998 Biennial Review Order*). Appendix D of the *1998 Biennial Review Order* contains a list of the new regulations and the sections from which the new regulations were moved.

[4] *See* 5 U.S.C. 553(b)(3)(B).

[5] 47 CFR 0.231(b).

[6] *See* 47 CFR 76.1601.

[7] In 1999, the Commission decided that the references to the 1993 notification requirements contained in § 76.58 were outdated and, thus, replaced those references with more general language, a 60 day notification requirement, when it moved the contents of § 76.58(b), (d) and (e) into new § 76.1617. *See* 47 CFR 76.1617; *1998 Biennial Review Order,* 14 FCC Rcd at Appendix C. The *1998 Biennial Review Order* contained a discussion of the replacement of the 1993 dates with the new 60-day notification requirements, and while the text referenced these requirements as appearing in new § 76.1619, an erratum indicated that they actually appear in § 76.1617. *1998 Biennial Review Order,* 14 FCC Rcd at 4667, paras. 28–29; Erratum, 1999 WL 163015, at Appendix C (Mar. 26, 1999).

[8] *See* 47 CFR 76.1607 and 76.1708(a).

[9] *See* Note 1 to § 76.1601.

[10] *See* 47 CFR 0.231(b). In addition, we note that the Communications Act of 1934, as amended (Act), directs the Commission to apply to OVS operators certain provisions that apply to cable operators. *See* 47 U.S.C. 573(c).

[11] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

D. Additional Information

8. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

III. Ordering Clauses

9. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303(r), and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 573, and § 0.231(b) of the Commission's rules, 47 CFR 0.231(b), this Order *is adopted,* effective thirty (30) days after the date of publication in the **Federal Register**.

10. *It is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303(r), and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 573, and § 0.231(b) of the Commission's rules, 47 CFR 0.231(b), the Commission's rules *are hereby amended* as set forth in the Final Rules below.

11. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order* to the Chief Counsel for Advocacy of the Small Business Administration.

12. *It is further ordered* that the Commission *shall send* a copy of this 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 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, Reporting and recordkeeping requirements.

Federal Communications Commission.

Jon Wilkins,

Managing Director.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Amend § 76.1506 by revising paragraph (g) to read as follows:

§ 76.1506 Carriage of television broadcast signals.

* * * * *

(g) *Notification.* Any provision of §§ 76.1601, 76.1607, 76.1617, or 76.1708(a) (second sentence) that refers to a ''cable operator,'' ''cable system,'' or ''principal headend'' shall apply, respectively, to an open video system operator, to an open video system, or to the equivalent of the principal headend for an open video system.

* * * * *

[FR Doc. 2015–01594 Filed 1–29–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD744

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian district and the Bering Sea subarea (BSEAI) of the Bering Sea and Aleutian Island management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the A season allowance of the 2015 Atka mackerel total allowable catch (TAC) in the BSEAI allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 27, 2015, through 1200 hrs, A.l.t., June 10, 2015.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2015 Atka mackerel TAC, in the BSEAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 1,150 metric tons by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014), and as adjusted by an inseason adjustment (80 FR 188, January 5, 2015).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the BSEAI by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of the Atka mackerel fishery in the BSEAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 26, 2015. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 27, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–01787 Filed 1–27–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 20
Friday, January 30, 2015

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 No. EERE–2013–BT–STD–0051]

RIN 1904–AD09

Energy Efficiency Program for Consumer Products: Energy Conservation Standards for General Service Lamps: Preliminary Technical Support Document

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 preliminary technical support document (TSD) for general service lamps (GSLs) energy conservation standards published on December 11, 2014. The comment period is extended to February 23, 2015.

DATES: The comment period for the preliminary TSD for GSLs published on December 11, 2014 (79 FR 73503) is extended to February 23, 2015.

ADDRESSES: Interested persons may submit comments, identified by docket number EERE–2013–BT–STD–0051 and/or Regulation Identification Number (RIN) 1904–AD09, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: GSL2013STD0051@ee.doe.gov*. Include the docket number EERE–2013–BT–STD–0051 and/or RIN 1904–AD09 in the subject line of the message.
- *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. [Please note that comments and CDs 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 Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

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 rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/83*. This Web page contains a link to the docket for this notice on the regulation.gov site. The *www.regulations.gov* Web page contains instructions on how to access all documents in the docket, including public comments.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202)-287–1604. Email: *GSL@ee.doe.gov*.

In the Office of the General Counsel, contact Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On December 11, 2014, the U.S. Department of Energy (DOE) published a notice of public meeting and availability of the preliminary TSD in the **Federal Register** to make available and invite comments on the preliminary analysis for establishing energy conservation standards for GSLs. 79 FR 73503. The notice provided for the written submission of comments by February 9, 2015, and oral comments were also accepted at a public meeting held on January 20, 2015. The National Electrical Manufacturers Association requested an extension of the public comment period to ensure adequate time to consider the preliminary technical support document and public meeting presentation, and to prepare and submit comments accordingly.

DOE has determined that an extension of the public comment period is appropriate to allow interested parties additional time to submit comments for DOE's consideration. Thus, DOE is extending the comment period by 14 days. DOE will consider any comments received by midnight of February 23, 2015 to be timely submitted.

Issued in Washington, DC, on January 26, 2015.

Kathleen B. Hogan,

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

[FR Doc. 2015–01779 Filed 1–29–15; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308, 364 and 391

RIN 3064–AE28

Transferred OTS Regulations Regarding Safety and Soundness Guidelines and Compliance Procedures and Amendments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking, the Federal Deposit Insurance Corporation (FDIC) proposes to rescind and remove from the Code of Federal Regulations 12 CFR part 391, subpart B, entitled ''Safety and Soundness Guidelines and Compliance Procedures'' and Appendix A and B to part 391, subpart B and supplement A to appendix B. With few exceptions addressed below, the requirements for state savings associations in part 391, subpart B, are substantively similar to those in the FDIC's 12 CFR part 308, subpart R, and in the FDIC's 12 CFR part 364.

Upon the completion of these proposed changes, the ''Standards for Safety and Soundness'' for all insured

depository institutions for which the FDIC has been designated the appropriate Federal banking agency will be found at part 364 and the ''Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies'' for all insured depository institutions for which the FDIC has been designated the appropriate Federal banking agency will be found at part 308, subpart R.

DATES: Comments must be received on or before March 31, 2015.

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

- *FDIC Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the agency Web site.
- *FDIC Email: Comments@fdic.gov.* Include RIN 3064–AE28 on the subject line of the message.
- *FDIC Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary consisting of no more than five single-spaced pages. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be requested from the Public Information Center by telephone at 1–877–275–3342 or 1–703–562–2200.

FOR FURTHER INFORMATION CONTACT: Rebecca M. Parks, Review Examiner, Division of Risk Management Supervision (202) 898–3912; Jann L. Harley, Senior Attorney, Legal Division (312) 382–6535; and Michael P. Condon, Counsel, Legal Division (202) 898–6536.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

The Dodd-Frank Act provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, codified at 12 U.S.C. 5411, the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (''OCC''), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (''FRB''), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[1]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in Section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[2] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the OTS's rules transferred to the FDIC governs safety and soundness guidelines, the submission and review of safety and soundness compliance plans, and the issuance of orders to correct safety and soundness deficiencies. The OTS's rule, formerly found at 12 CFR part 570, was transferred to the FDIC with only nomenclature changes and is now found in the FDIC's rules at part 391, subpart B, entitled ''Safety and Soundness Guidelines and Compliance Procedures.'' The ''Interagency Guidelines Establishing Standards for Safety and Soundness'' were found at appendix A to part 391, subpart B, the ''Interagency Guidelines Establishing Information Security Standards'' were found at appendix B to part 391, subpart B, and the ''Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice'' were found at the supplement to appendix B to part 391, subpart B. Before the transfer of the OTS rules and continuing today, the FDIC's rules contained part 364, entitled ''Standards for Safety and Soundness,'' a rule establishing safety and soundness standards for State nonmember insured banks and to State-licensed insured branches of foreign banks, that are subject to section 39 of the FDI Act, 12 U.S.C. 1831p–1. Part 364 also established safety and soundness standards relating to information security for State nonmember insured banks, insured State licensed branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisors) as set out in appendix B to part 364, the ''Interagency Guidelines Establishing Information Security

[1] 76 FR 39247 (July 6, 2011).

[2] 76 FR 47652 (Aug. 5, 2011).

Standards'' and supplement A to appendix B to part 364, the ''Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.'' Additionally, before the transfer of the OTS rules and continuing today, the FDIC's rules contained part 308, subpart R, entitled ''Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies.''

After careful review and comparison of part 391, subpart B and part 308, subpart R, and part 364 and its accompanying appendices and supplement to appendices, the FDIC proposes to rescind subpart B of part 391 because, as discussed below, it is substantively redundant to existing part 308, subpart R, and part 364 and the accompanying appendices A and B and supplement A to appendix B.

Furthermore, to clarify that part 308, subpart R, and part 364 and its accompanying appendices A and B and supplement A to appendix B, apply to all insured depository institutions for which the FDIC has been designated the appropriate Federal banking agency, the FDIC proposes to amend part 308, subpart R, and part 364 and to reissue the appendices and supplement A to appendix B to part 364 to add ''State savings associations'' within the list of institutions to which the rules and the appendices apply.

FDIC's Existing 12 CFR Part 308, Subpart R

Section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law 102–242, added Section 39 to the FDI Act (12 U.S.C. 21 1831p–1), which required each Federal banking agency to establish by regulation certain safety and soundness standards for the insured depository institutions for which it was the primary Federal regulator. Section 39 of the FDI Act was further amended on September 23, 1994 by section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325. In response to Section 39 of the FDI Act, the FDIC adopted subpart R of part 308 in 1995 to address the submission and review of safety and soundness compliance plans and issuance of orders to correct safety and soundness deficiencies.

FDIC's Existing 12 CFR Part 364 and Appendices A and B and Supplement A to Appendix B

Section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law 102–242, added Section 39 to the FDI Act (12 U.S.C. 21 1831p–1), which required each Federal banking agency to establish by regulation certain safety and soundness standards for the insured depository institutions for which it was the primary Federal regulator. Section 39 of the FDI Act was further amended on September 23, 1994 by section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325. In response to Section 39 of the FDI Act, the FDIC adopted part 364 in 1995 and appendix A to part 364, the ''Interagency Guidelines Establishing Standards for Safety and Soundness,'' in 1995. The FDIC adopted appendix B to part 364, the ''Interagency Guidelines Establishing Information Security Standards,'' in 1998. The FDIC adopted supplement A to appendix B to part 364, the ''Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice,'' in 2005.

Former OTS's 12 CFR Part 570 (transferred to FDIC's Part 391, Subpart B)

In 1995, the OTS adopted 12 CFR part 570 as a final rule governing safety and soundness guidelines and compliance procedures for State savings associations. The OTS adopted appendix A to part 570, the ''Interagency Guidelines Establishing Standards for Safety and Soundness,'' in 1995, adopted appendix B to part 570, the ''Interagency Guidelines Establishing Information Security Standards,'' in 1998, and adopted the supplement to appendix B, the ''Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice,'' in 2005.

Despite the differences addressed above and minor technical nuances, the OTS's rule was otherwise substantively similar to the FDIC's rules governing safety and soundness guidelines and compliance procedures found in part 308, subpart R, and part 364 and its accompanying appendices. After careful comparison of the OTS part 570 (which existed prior to the transfer of the OTS rules to part 391) with the FDIC's part 308, subpart R, and the FDIC's part 364, the FDIC has concluded that the transferred OTS rules found at part 391, subpart B, and the accompanying guidelines found in appendices A and B and the supplement to appendix B, are substantively redundant. Therefore, based on the above, the FDIC proposes to rescind and remove from the Code of Federal Regulations the rules located at part 391, subpart B.

II. The Proposal

Regarding the functions of the former OTS that were transferred to the FDIC, Section 316(b)(3) of the Dodd-Frank Act, 12 U.S.C. 5414(b)(3), in pertinent part, provides that the former OTS's regulations will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law. After reviewing the rules and accompanying appendices currently found in part 391, subpart B, the FDIC, as the appropriate Federal banking agency for State savings associations, proposes to rescind part 391, subpart B in its entirety. The FDIC also proposes to amend part 364 and appendix A and B and supplement A to appendix B to include State savings associations within the scope of the regulation and guidelines. The FDIC also proposes to amend part 308, subpart R to apply to State savings associations. If the proposal is finalized, the safety and soundness guidelines in part 364 and its accompanying appendices and supplement to appendices would apply to all FDIC-supervised institutions, and the procedures found in part 308, subpart R, for the submission and review of safety and soundness compliance plans and issuance of orders to correct safety and soundness deficiencies would also apply to all FDIC-supervised institutions. Part 391, subpart B would be removed because it is redundant of the rules found in part 364 and part 308, subpart R. Rescinding part 391, subpart B, will serve to streamline the FDIC's rules and eliminate unnecessary regulations.

III. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following:

(1.) Are the provisions of part 308, subpart R, sufficient to establish effective procedures for the submission and review of safety and soundness compliance plans and issuance of orders to correct safety and soundness deficiencies would also apply to all FDIC-supervised institutions?

(2.) Are the provisions of the proposed part 364 and the accompanying appendices and supplement to appendices sufficient to provide consistent and effective safety and soundness guidance and information security standards? Please substantiate your answer.

(3.) What impacts, positive or negative, can you foresee in the FDIC's proposal to rescind part 391, subpart B?

Written comments must be received by the FDIC no later than March 31, 2015.

IV. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3501–3521), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

The Proposed Rule would rescind and remove part 391, subpart B, from the FDIC regulations. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by Title III of the Dodd-Frank Act. Part 391, subpart B, is largely redundant of the FDIC's existing part 364 regarding standards for safety and soundness and subpart R of the FDIC's existing part 308 regarding the submission and review of safety and soundness compliance plans and issuance of orders to correct safety and soundness deficiencies.

The Proposed Rule would amend parts 364 and subpart R of Part 308 to include State savings associations within the scope of those regulations. This measure is to clarify that State savings associations, as well as State nonmember insured banks and foreign banks having insured branches, are all subject to part 364 and the provisions of subpart R of part 308. Thus, these provisions of the Proposed Rule will neither create any new paperwork information collections nor impact current burden estimates. Based on the above, no information collection request has been submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $550 million).[3] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. For the reasons provided below, the FDIC certifies that the Proposed Rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed in this notice of proposed rulemaking, part 391, subpart B was transferred from OTS's part 570 which established safety and soundness guidelines and the process for requesting compliance plans and issuing orders to correct deficiencies. OTS's part 570 had been in effect since 1995, and all state savings associations were required to comply with it. Because it is redundant of existing part 364 of the FDIC's rules and subpart R of part 308 of the FDIC's rules, the FDIC proposes rescinding and removing part 391, subpart B. As a result, all FDIC-supervised institutions, including State savings associations, would be required to comply with part 364 and part 308, subpart R. Because all State savings associations have been required to comply with substantially similar safety and soundness guidelines and have been subject to substantially similar procedures for the filing of safety and soundness compliance plans and orders to correct deficiencies since 1995, today's Proposal would have no significant economic impact on any State savings association.

C. Plain Language

Section 722 of the GLB Act, codified at 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the Proposed Rule is clearly stated and effectively organized, and how the FDIC might make it easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[4] The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review. The action taken on this rule will be included as part of the EGRPRA review that is currently under way. As part of that review, the FDIC invites comments concerning whether the Proposed Rule would impose any outdated or unnecessary regulatory requirements on insured depository institutions. If you provide such comments, please be specific and provide alternatives whenever appropriate.

List of Subjects

12 CFR part 308

Banks, banking, Safety and soundness compliance plans, Savings associations.

12 CFR part 364

Banks, banking, Safety and soundness guidelines.

12 CFR part 391

Safety and soundness guidelines.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend parts 308, 364, and 391 of title 12 of the Code of Federal Regulations as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358; and Pub. L. 109–351.

■ 2. Revise subpart R of part 308 to read as follows:

[3] 5 U.S.C. 601 *et seq.*

[4] Public Law 104–208 (Sept. 30, 1996).

Subpart R—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders To Correct Safety and Soundness Deficiencies

Sec.
308.300 Scope.
308.301 Purpose.
308.302 Determination and notification of failure to meet a safety and soundness standard and request for compliance plan.
308.303 Filing of safety and soundness compliance plan.
308.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
308.305 Enforcement of orders.

§ 308.300 Scope.

The rules and procedures set forth in this subpart apply to insured state nonmember banks, to state-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p–1), and to state savings associations (in aggregate, bank or banks and state savings association or state savings associations).

§ 308.301 Purpose.

Section 39 of the FDI Act requires the FDIC to establish safety and soundness standards. Pursuant to section 39, a bank or savings association may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard established by guideline under section 39(a) or (b). An enforceable order under section 8 of the FDI Act may be issued if, after being notified that it is in violation of a safety and soundness standard established under section 39, the bank or savings association fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requiring submission of a compliance plan and issuing an enforceable order pursuant to section 39.

§ 308.302 Determination and notification of failure to meet a safety and soundness standard and request for compliance plan.

(a) *Determination.* The FDIC may, based upon an examination, inspection or any other information that becomes available to the FDIC, determine that a bank or state savings association has failed to satisfy the safety and soundness standards set out in part 364 of this chapter and in the Interagency Guidelines Establishing Standards for Safety and Soundness in appendix A and the Interagency Guidelines Establishing Information Security Standards in appendix B to part 364 of this chapter.

(b) *Request for compliance plan.* If the FDIC determines that a bank or state savings association has failed a safety and soundness standard pursuant to paragraph (a) of this section, the FDIC may request, by letter or through a report of examination, the submission of a compliance plan and the bank or state savings association shall be deemed to have notice of the request three days after mailing of the letter by the FDIC or delivery of the report of examination.

§ 308.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan*—(1) *In general.* A bank or state savings association shall file a written safety and soundness compliance plan with the FDIC within 30 days of receiving a request for a compliance plan pursuant to § 308.302(b), unless the FDIC notifies the bank or state savings association in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a bank or state savings association is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the FDIC, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the bank or state savings association will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the FDIC shall provide written notice to the bank or state savings association of whether the plan has been approved or seek additional information from the bank or state savings association regarding the plan. The FDIC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan*—(1) *Supervisory actions.* If a bank or state savings association fails to submit an acceptable plan within the time specified by the FDIC or fails in any material respect to implement a compliance plan, then the FDIC shall, by order, require the bank or state savings association to correct the deficiency and may take further actions provided in section 39(e)(2)(B). Pursuant to section 39(e)(3), the FDIC may be required to take certain actions if the bank or state savings association commenced operations or experienced a change in control within the previous 24-month period, or the bank or state savings association experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, extraordinary growth means an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank or state savings association that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) will be excluded.

(e) *Amendment of compliance plan.* A bank or state savings association that has filed an approved compliance plan may, after prior written notice to and approval by the FDIC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank or state savings association shall implement the compliance plan as previously approved.

§ 308.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) *In general.* The FDIC shall provide a bank or state savings association prior written notice of the FDIC's intention to issue an order requiring the bank or state savings association to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank or state savings association shall have such time to respond to a proposed order as provided by the FDIC under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the FDIC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank or state savings association immediately to take actions to correct a safety and soundness deficiency or take or refrain from taking other actions pursuant to section 39. A bank or state savings association that is subject to such an immediately effective order may submit a written appeal of the order to the FDIC. Such an appeal

must be received by the FDIC within 14 calendar days of the issuance of the order, unless the FDIC permits a longer period. The FDIC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the FDIC, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intent to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank or state savings association;

(2) A description of any restrictions, prohibitions, or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank or state savings association subject to the order may file with the FDIC a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A bank or state savings association may file a written response to a notice of intent to issue an order within the time period set by the FDIC. Such a response must be received by the FDIC within 14 calendar days from the date of the notice unless the FDIC determines that a different period is appropriate in light of the safety and soundness of the bank or state savings association or other relevant circumstances.

(2) *Contents of response.* The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or state savings association regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the FDIC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank or state savings association; or

(3) Seek additional information or clarification of the response from the bank or state savings association, or any other relevant source.

(e) *Failure to file response.* Failure by a bank or state savings association to file with the FDIC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification of rescission of order.* Any bank or state savings association that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the FDIC, the order shall continue in place while such request is pending before the FDIC.

§ 308.305 Enforcement of orders.

(a) *Judicial remedies.* Whenever a bank or state savings association fails to comply with an order issued under section 39, the FDIC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Failure to comply with order.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any bank or state savings association that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

■ 3. Revise part 364 to read as follows:

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

Sec.

364.100 Purpose.
364.101 Standards for safety and soundness.
Appendix A to Part 364—Interagency Guidelines Establishing Standards for Safety and Soundness
Appendix B to Part 364—Interagency Guidelines Establishing Information Security Standards

Authority: 12 U.S.C. 1818 and 1819 (Tenth), 1831p–1; 15 U.S.C. 1681b, 1681s, 1681w, 6801(b), 6805(b)(1).

§ 364.100 Purpose.

Section 39 of the Federal Deposit Insurance Act requires the Federal Deposit Insurance Corporation to establish safety and soundness standards. Pursuant to section 39, this part establishes safety and soundness standards by guideline.

§ 364.101 Standards for safety and soundness.

(a) *General standards.* The Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), as set forth as appendix A to this part, apply to all insured state nonmember banks, to state-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act, and to state savings associations (in aggregate, bank or banks and savings association or savings associations).

(b) *Interagency Guidelines Establishing Information Security Standards.* The Interagency Guidelines Establishing Information Security Standards prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), and sections 501 and 505(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801, 6805(b)), and with respect to the proper disposal of consumer information requirements pursuant to section 628 of the Fair Credit Reporting Act (15 U.S.C. 1681w), as set forth in appendix B to this part, apply to all insured state nonmember banks, insured state licensed branches of foreign banks, any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), and to state savings associations. The interagency regulations and guidelines on identity theft detection, prevention, and mitigation prescribed pursuant to section 114 of the Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. 1681m(e), are set forth in §§ 334.90, 334.91, and Appendix J of part 334.

Appendix A to Part 364—Interagency Guidelines Establishing Standards for Safety and Soundness

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A. Excessive compensation.

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I. Introduction

i. Section 39 of the Federal Deposit Insurance Act[1] (FDI Act) requires each Federal banking agency (collectively, the agencies) to establish certain safety and soundness standards by regulation or by guidelines for all insured depository institutions. Under section 39, the agencies must establish three types of standards: (1) Operational and managerial standards; (2) compensation standards; and (3) such standards relating to asset quality, earnings, and stock valuation as they determine to be appropriate.

ii. Section 39(a) requires the agencies to establish operational and managerial standards relating to: (1) Internal controls, information systems and internal audit systems, in accordance with section 36 of the FDI Act (12 U.S.C. 1831m); (2) loan documentation; (3) credit underwriting; (4) interest rate exposure; (5) asset growth; and (6) compensation, fees, and benefits, in accordance with subsection (c) of section 39. Section 39(b) requires the agencies to establish standards relating to asset quality, earnings, and stock valuation that the agencies determine to be appropriate.

iii. Section 39(c) requires the agencies to establish standards prohibiting as an unsafe and unsound practice any compensatory arrangement that would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits and any compensatory arrangement that could lead to material financial loss to an institution. Section 39(c) also requires that the agencies establish standards that specify when compensation is excessive.

iv. If an agency determines that an institution fails to meet any standard established by guidelines under subsection (a) or (b) of section 39, the agency may require the institution to submit to the agency an acceptable plan to achieve compliance with the standard. In the event that an institution fails to submit an acceptable plan within the time allowed by the agency or fails in any material respect to implement an accepted plan, the agency must, by order, require the institution to correct the deficiency. The agency may, and in some cases must, take other supervisory actions until the deficiency has been corrected.

v. The agencies have adopted amendments to their rules and regulations to establish deadlines for submission and review of compliance plans.[2]

vi. The following Guidelines set out the safety and soundness standards that the agencies use to identify and address problems at insured depository institutions before capital becomes impaired. The agencies believe that the standards adopted in these Guidelines serve this end without dictating how institutions must be managed and operated. These standards are designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the Deposit Insurance Fund.

A. Preservation of Existing Authority

Neither section 39 nor these Guidelines in any way limits the authority of the agencies to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and these Guidelines may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the agencies. Nothing in these Guidelines limits the authority of the FDIC pursuant to section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831(o)) and Part 325 of Title 12 of the Code of Federal Regulations.

B. Definitions

1. *In general.* For purposes of these Guidelines, except as modified in the Guidelines or unless the context otherwise requires, the terms used have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813 and 1831p–1).

2. *Board of directors,* in the case of a state-licensed insured branch of a foreign bank and in the case of a federal branch of a foreign bank, means the managing official in charge of the insured foreign branch.

3. *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

4. *Director* shall have the meaning described in 12 CFR 215.2(d).[3]

5. *Executive officer* shall have the meaning described in 12 CFR 215.2(e).[4]

6. *Principal shareholder* shall have the meaning described in 12 CFR 215.2(m).[5]

II. Operational and Managerial Standards

A. *Internal controls and information systems.* An institution should have internal controls and information systems that are appropriate to the size of the institution and the nature, scope and risk of its activities and that provide for:

1. An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to established policies;

2. Effective risk assessment;

3. Timely and accurate financial, operational and regulatory reports;

4. Adequate procedures to safeguard and manage assets; and

5. Compliance with applicable laws and regulations.

B. *Internal audit system.* An institution should have an internal audit system that is appropriate to the size of the institution and the nature and scope of its activities and that provides for:

1. Adequate monitoring of the system of internal controls through an internal audit function. For an institution whose size, complexity or scope of operations does not warrant a full scale internal audit function, a system of independent reviews of key internal controls may be used;

2. Independence and objectivity;

3. Qualified persons;

4. Adequate testing and review of information systems;

5. Adequate documentation of tests and findings and any corrective actions;

6. Verification and review of management actions to address material weaknesses; and

7. Review by the institution's audit committee or board of directors of the effectiveness of the internal audit systems.

C. *Loan documentation.* An institution should establish and maintain loan documentation practices that:

1. Enable the institution to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;

2. Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

3. Ensure that any claim against a borrower is legally enforceable;

4. Demonstrate appropriate administration and monitoring of a loan; and

5. Take account of the size and complexity of a loan.

D. *Credit underwriting.* An institution should establish and maintain prudent credit underwriting practices that:

1. Are commensurate with the types of loans the institution will make and consider the terms and conditions under which they will be made;

2. Consider the nature of the markets in which loans will be made;

3. Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

4. Establish a system of independent, ongoing credit review and appropriate communication to management and to the board of directors;

5. Take adequate account of concentration of credit risk; and

6. Are appropriate to the size of the institution and the nature and scope of its activities.

E. *Interest rate exposure.* An institution should:

1. Manage interest rate risk in a manner that is appropriate to the size of the institution and the complexity of its assets and liabilities; and

2. Provide for periodic reporting to management and the board of directors regarding interest rate risk with adequate information for management and the board of directors to assess the level of risk.

F. *Asset growth.* An institution's asset growth should be prudent and consider:

1. The source, volatility and use of the funds that support asset growth;

2. Any increase in credit risk or interest rate risk as a result of growth; and

3. The effect of growth on the institution's capital.

G. *Asset quality.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration in those assets. The institution should:

1. Conduct periodic asset quality reviews to identify problem assets;
2. Estimate the inherent losses in those assets and establish reserves that are sufficient to absorb estimated losses;
3. Compare problem asset totals to capital;
4. Take appropriate corrective action to resolve problem assets;
5. Consider the size and potential risks of material asset concentrations; and
6. Provide periodic asset reports with adequate information for management and the board of directors to assess the level of asset risk.

H. *Earnings.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to evaluate and monitor earnings and ensure that earnings are sufficient to maintain adequate capital and reserves. The institution should:

1. Compare recent earnings trends relative to equity, assets, or other commonly used benchmarks to the institution's historical results and those of its peers;
2. Evaluate the adequacy of earnings given the size, complexity, and risk profile of the institution's assets and operations;
3. Assess the source, volatility, and sustainability of earnings, including the effect of nonrecurring or extraordinary income or expense;
4. Take steps to ensure that earnings are sufficient to maintain adequate capital and reserves after considering the institution's asset quality and growth rate; and
5. Provide periodic earnings reports with adequate information for management and the board of directors to assess earnings performance.

I. *Compensation, fees and benefits.* An institution should maintain safeguards to prevent the payment of compensation, fees, and benefits that are excessive or that could lead to material financial loss to the institution.

III. Prohibition on Compensation That Constitutes an Unsafe and Unsound Practice

A. Excessive Compensation

Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

1. The combined value of all cash and noncash benefits provided to the individual;
2. The compensation history of the individual and other individuals with comparable expertise at the institution;
3. The financial condition of the institution;
4. Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;
5. For postemployment benefits, the projected total cost and benefit to the institution;
6. Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and
7. Any other factors the agencies determine to be relevant.

B. Compensation Leading to Material Financial Loss

Compensation that could lead to material financial loss to an institution is prohibited as an unsafe and unsound practice.

[1] Section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1) was added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, 105 Stat. 2236 (1991), and amended by section 956 of the Housing and Community Development Act of 1992, Pub. L. 102–550, 106 Stat. 3895 (1992) and section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (1994).

[2] For the Office of the Comptroller of the Currency, these regulations appear at 12 CFR part 30; for the Board of Governors of the Federal Reserve System, these regulations appear at 12 CFR part 263; and for the Federal Deposit Insurance Corporation, these regulations appear at 12 CFR part 308, subpart R.

[3] In applying these definitions for savings associations, pursuant to 12 U.S.C. 1464, savings associations shall use the terms ''savings association'' and ''insured savings association'' in place of the terms ''member bank'' and ''insured bank''.

[4] See footnote 3 in section I.B.4. of this appendix.

[5] See footnote 3 in section I.B.4. of this appendix.

Appendix B to Part 364—Interagency Guidelines Establishing Information Security Standards

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I. Introduction

The Interagency Guidelines Establishing Information Security Standards (Guidelines) set forth standards pursuant to section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p–1, and sections 501 and 505(b), 15 U.S.C. 6801 and 6805(b), of the Gramm-Leach-Bliley Act. These Guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. These Guidelines also address standards with respect to the proper disposal of consumer information pursuant to sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w).

A. *Scope.* The Guidelines apply to customer information maintained by or on behalf of, and to the disposal of consumer information by or on the behalf of, entities over which the Federal Deposit Insurance Corporation (FDIC) has authority. Such entities, referred to as ''insured depository institution'' or ''institution'' are banks insured by the FDIC (other than members of the Federal Reserve System), state savings associations insured by the FDIC, insured state branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

B. *Preservation of Existing Authority.* Neither section 39 nor these Guidelines in any way limit the authority of the FDIC to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. The FDIC may take action under section 39 and these Guidelines independently of, in conjunction with, or in addition to, any other enforcement action available to the FDIC.

C. *Definitions.* 1. Except as modified in the Guidelines, or unless the context otherwise requires, the terms used in these Guidelines have the same meanings as set forth in sections 3 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1813 and 1831p–1).

2. For purposes of the Guidelines, the following definitions apply:

a. *Board of directors,* in the case of a branch or agency of a foreign bank, means the managing official in charge of the branch or agency.

b. *Consumer Information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the institution for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not personally identify an individual.

i. *Examples:* (1) *Consumer information* includes:

(A) A consumer report that an institution obtains;

(B) information from a consumer report that the institution obtains from its affiliate after the consumer has been given a notice and has elected not to opt out of that sharing;

(C) information from a consumer report that the institution obtains about an individual who applies for but does not receive a loan, including any loan sought by an individual for a business purpose;

(D) information from a consumer report that the institution obtains about an individual who guarantees a loan (including a loan to a business entity); or

(E) information from a consumer report that the institution obtains about an employee or prospective employee.

(2) *Consumer information* does not include:

(A) Aggregate information, such as the mean score, derived from a group of consumer reports; or

(B) blind data, such as payment history on accounts that are not personally identifiable, that may be used for developing credit scoring models or for other purposes.

c. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

d. *Customer* means any customer of the institution as defined in § 332.3(h) of this chapter.

e. *Customer information* means any record containing nonpublic personal information, as defined in § 332.3(n) of this chapter, about a customer, whether in paper, electronic, or other form, that is maintained by or on behalf of the institution.

f. *Customer information systems* means any methods used to access, collect, store, use, transmit, protect, or dispose of customer information.

g. *Service provider* means any person or entity that maintains, processes, or otherwise is permitted access to customer information or consumer information through its provision of services directly to the institution.

II. Standards for Information Security

A. *Information Security Program.* Each insured depository institution shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the institution and the nature and scope of its activities. While all parts of the institution are not required to implement a uniform set of policies, all elements of the information security program must be coordinated.

B. *Objectives.* An institution's information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;

2. Protect against any anticipated threats or hazards to the security or integrity of such information;

3. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer; and

4. Ensure the proper disposal of customer information and consumer information.

III. Development and Implementation of Information Security Program

A. *Involve the Board of Directors.* The board of directors or an appropriate committee of the board of each insured depository institution shall:

1. Approve the institution's written information security program; and

2. Oversee the development, implementation, and maintenance of the institution's information security program, including assigning specific responsibility for its implementation and reviewing reports from management.

B. *Assess Risk.*

Each institution shall:

1. Identify reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems.

2. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information.

3. Assess the sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.

C. *Manage and Control Risk.* Each institution shall:

1. Design its information security program to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the institution's activities. Each institution must consider whether the following security measures are appropriate for the institution and, if so, adopt those measures the institution concludes are appropriate:

a. Access controls on customer information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing customer information to unauthorized individuals who may seek to obtain this information through fraudulent means.

b. Access restrictions at physical locations containing customer information, such as buildings, computer facilities, and records storage facilities to permit access only to authorized individuals;

c. Encryption of electronic customer information, including while in transit or in storage on networks or systems to which unauthorized individuals may have access;

d. Procedures designed to ensure that customer information system modifications are consistent with the institution's information security program;

e. Dual control procedures, segregation of duties, and employee background checks for employees with responsibilities for or access to customer information;

f. Monitoring systems and procedures to detect actual and attempted attacks on or intrusions into customer information systems;

g. Response programs that specify actions to be taken when the institution suspects or detects that unauthorized individuals have gained access to customer information systems, including appropriate reports to regulatory and law enforcement agencies; and

h. Measures to protect against destruction, loss, or damage of customer information due to potential environmental hazards, such as fire and water damage or technological failures.

2. Train staff to implement the institution's information security program.

3. Regularly test the key controls, systems and procedures of the information security program. The frequency and nature of such tests should be determined by the institution's risk assessment. Tests should be conducted or reviewed by independent third parties or staff independent of those that develop or maintain the security programs.

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of customer information and consumer information in accordance with each of the requirements of this paragraph III.

D. *Oversee Service Provider Arrangements.* Each institution shall:

1. Exercise appropriate due diligence in selecting its service providers;

2. Require its service providers by contract to implement appropriate measures designed to meet the objectives of these Guidelines; and

3. Where indicated by the institution's risk assessment, monitor its service providers to confirm that they have satisfied their obligations as required by paragraph D.2. As part of this monitoring, an institution should review audits, summaries of test results, or other equivalent evaluations of its service providers.

E. *Adjust the Program.* Each institution shall monitor, evaluate, and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the institution's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.

F. *Report to the Board.* Each institution shall report to its board or an appropriate committee of the board at least annually. This report should describe the overall status of the information security program and the institution's compliance with these Guidelines. The report, which will vary depending upon the complexity of each institution's program should discuss material matters related to its program, addressing issues such as: Risk assessment; risk management and control decisions; service provider arrangements; results of testing; security breaches or violations, and management's responses; and recommendations for changes in the information security program.

G. *Implement the Standards.* 1. *Effective date.* Each institution must implement an information security program pursuant to these Guidelines by July 1, 2001.

2. *Two-year grandfathering of agreements with service providers.* Until July 1, 2003, a contract that an institution has entered into with a service provider to perform services for it or functions on its behalf, satisfies the provisions of paragraph III.D., even if the contract does not include a requirement that the servicer maintain the security and confidentiality of customer information as long as the institution entered into the contract on or before March 5, 2001.

3. *Effective date for measures relating to the disposal of consumer information.* Each institution must satisfy these Guidelines with respect to the proper disposal of consumer information by July 1, 2005.

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., an institution's contracts with its service providers that have access to consumer information and that may dispose of consumer information, entered into before July 1, 2005, must comply with the provisions of the Guidelines relating to the proper disposal of consumer information by July 1, 2006.

Supplement A to Appendix B to Part 364 Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice

I. Background

This Guidance [1] interprets section 501(b) of the Gramm-Leach-Bliley Act (GLBA) and the Interagency Guidelines Establishing Information Security Standards (the Security Guidelines) [2] and describes response programs, including customer notification procedures, that a financial institution should develop and implement to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer. The scope of, and definitions of terms used in, this Guidance are identical to those of the Security Guidelines. For example, the term ''customer information'' is the same term used in the Security Guidelines, and means any record containing nonpublic personal information about a customer, whether in paper, electronic, or other form, maintained by or on behalf of the institution.

A. Interagency Security Guidelines

Section 501(b) of the GLBA required the Agencies to establish appropriate standards for financial institutions subject to their jurisdiction that include administrative, technical, and physical safeguards, to protect the security and confidentiality of customer information. Accordingly, the Agencies issued Security Guidelines requiring every financial institution to have an information security program designed to:

1. Ensure the security and confidentiality of customer information;

2. Protect against any anticipated threats or hazards to the security or integrity of such information; and

3. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

B. Risk Assessment and Controls

1. The Security Guidelines direct every financial institution to assess the following risks, among others, when developing its information security program:

a. Reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;

b. The likelihood and potential damage of threats, taking into consideration the sensitivity of customer information; and

c. The sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.[3]

2. Following the assessment of these risks, the Security Guidelines require a financial institution to design a program to address the identified risks. The particular security measures an institution should adopt will depend upon the risks presented by the complexity and scope of its business. At a minimum, the financial institution is required to consider the specific security measures enumerated in the Security Guidelines,[4] and adopt those that are appropriate for the institution, including:

a. Access controls on customer information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing customer information to unauthorized individuals who may seek to obtain this information through fraudulent means;

b. Background checks for employees with responsibilities for access to customer information; and

c. Response programs that specify actions to be taken when the financial institution suspects or detects that unauthorized individuals have gained access to customer information systems, including appropriate reports to regulatory and law enforcement agencies.[5]

C. Service Providers

The Security Guidelines direct every financial institution to require its service providers by contract to implement appropriate measures designed to protect against unauthorized access to or use of customer information that could result in substantial harm or inconvenience to any customers.[6]

II. Response Program

Millions of Americans, throughout the country, have been victims of identity theft.[7] Identity thieves misuse personal information they obtain from a number of sources, including financial institutions, to perpetrate identity theft. Therefore, financial institutions should take preventative measures to safeguard customer information against attempts to gain unauthorized access to the information. For example, financial institutions should place access controls on customer information systems and conduct background checks for employees who are authorized to access customer information.[8] However, every financial institution should also develop and implement a risk-based response program to address incidents of unauthorized access to customer information in customer information systems [9] that occur nonetheless. A response program should be a key part of an institution's information security program.[10] The program should be appropriate to the size and complexity of the institution and the nature and scope of its activities.

In addition, each institution should be able to address incidents of unauthorized access to customer information in customer information systems maintained by its domestic and foreign service providers. Therefore, consistent with the obligations in the Guidelines that relate to these arrangements, and with existing guidance on this topic issued by the Agencies,[11] an institution's contract with its service provider should require the service provider to take appropriate actions to address incidents of unauthorized access to the financial institution's customer information, including notification to the institution as soon as possible of any such incident, to enable the institution to expeditiously implement its response program.

A. Components of a Response Program

1. At a minimum, an institution's response program should contain procedures for the following:

a. Assessing the nature and scope of an incident, and identifying what customer information systems and types of customer information have been accessed or misused;

b. Notifying its primary Federal regulator as soon as possible when the institution becomes aware of an incident involving unauthorized access to or use of *sensitive* customer information, as defined below;

c. Consistent with the Agencies' Suspicious Activity Report (''SAR'') regulations,[12] notifying appropriate law enforcement authorities, in addition to filing a timely SAR in situations involving Federal criminal violations requiring immediate attention, such as when a reportable violation is ongoing;

d. Taking appropriate steps to contain and control the incident to prevent further unauthorized access to or use of customer information, for example, by monitoring, freezing, or closing affected accounts, while preserving records and other evidence;[13] and

e. Notifying customers when warranted.

2. Where an incident of unauthorized access to customer information involves customer information systems maintained by an institution's service providers, it is the responsibility of the financial institution to notify the institution's customers and regulator. However, an institution may authorize or contract with its service provider to notify the institutions' customers or regulator on its behalf.

III. Customer Notice

Financial institutions have an affirmative duty to protect their customers' information against unauthorized access or use. Notifying customers of a security incident involving the unauthorized access or use of the customer's information in accordance with the standard set forth below is a key part of that duty. Timely notification of customers is important to manage an institution's reputation risk. Effective notice also may reduce an institution's legal risk, assist in maintaining good customer relations, and enable the institution's customers to take steps to protect themselves against the consequences of identity theft. When customer notification is warranted, an institution may not forgo notifying its customers of an incident because the institution believes that it may be potentially embarrassed or inconvenienced by doing so.

A. Standard for Providing Notice

When a financial institution becomes aware of an incident of unauthorized access to sensitive customer information, the institution should conduct a reasonable investigation to promptly determine the likelihood that the information has been or will be misused. If the institution determines that misuse of its information about a customer has occurred or is reasonably possible, it should notify the affected customer as soon as possible. Customer notice may be delayed if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and provides the institution with a written request for the delay. However, the institution should notify its customers as soon as notification will no longer interfere with the investigation.

1. Sensitive Customer Information

Under the Guidelines, an institution must protect against unauthorized access to or use of customer information that could result in substantial harm or inconvenience to any customer. Substantial harm or inconvenience is most likely to result from improper access to *sensitive customer information* because this type of information is most likely to be misused, as in the commission of identity theft. For purposes of this Guidance, *sensitive customer information* means a customer's name, address, or telephone number, in conjunction with the customer's social security number, driver's license number, account number, credit or debit card number, or a personal identification number or password that would permit access to the customer's account. *Sensitive customer information* also includes any combination of components of customer information that would allow someone to log onto or access the customer's account, such as user name or password or password and account number.

2. Affected Customers

If a financial institution, based upon its investigation, can determine from its logs or other data precisely which customers' information has been improperly accessed, it may limit notification to those customers with regard to whom the institution determines that misuse of their information has occurred or is reasonably possible. However, there may be situations where the institution determines that a group of files has been accessed improperly, but is unable to identify which specific customers' information has been accessed. If the circumstances of the unauthorized access lead the institution to determine that misuse of the information is reasonably possible, it should notify all customers in the group.

B. Content of Customer Notice

1. Customer notice should be given in a clear and conspicuous manner. The notice should describe the incident in general terms and the type of customer information that was the subject of unauthorized access or use. It also should generally describe what the institution has done to protect the customers' information from further unauthorized access. In addition, it should include a telephone number that customers can call for further information and assistance.[14] The notice also should remind customers of the need to remain vigilant over the next twelve to twenty-four months, and to promptly report incidents of suspected identify theft to the institution. The notice should include the following additional items, when appropriate:

a. A recommendation that the customer review account statements and immediately report any suspicious activity to the institution;

b. A description of fraud alerts and an explanation of how the customer may place a fraud alert in the customer's consumer reports to put the customer's creditors on notice that the customer may be a victim of fraud;

c. A recommendation that the customer periodically obtain credit reports from each nationwide credit reporting agency and have information relating to fraudulent transactions deleted;

d. An explanation of how the customer may obtain a credit report free of charge; and

e. Information about the availability of the FTC's online guidance regarding steps a consumer can take to protect against identity theft. The notice should encourage the customer to report any incidents of identity theft to the FTC, and should provide the FTC's Web site address and toll-free telephone number that customers may use to obtain the identity theft guidance and report suspected incidents of identity theft.[15]

2. The Agencies encourage financial institutions to notify the nationwide consumer reporting agencies prior to sending notices to a large number of customers that include contact information for the reporting agencies.

C. Delivery of Customer Notice

Customer notice should be delivered in any manner designed to ensure that a customer can reasonably be expected to receive it. For example, the institution may choose to contact all customers affected by telephone or by mail, or by electronic mail for those customers for whom it has a valid email address and who have agreed to receive communications electronically.

[1] This Guidance was jointly issued by the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). Pursuant to 12 U.S.C. 5412, the OTS is no longer a party to this Guidance.

[2] 12 CFR part 30, app. B (OCC); 12 CFR part 208, app. D–2 and part 225, app. F (Board); and 12 CFR part 364, app. B (FDIC). The ''Interagency Guidelines Establishing Information Security Standards'' were formerly known as ''The Interagency Guidelines Establishing Standards for Safeguarding Customer Information.''

[3] *See* Security Guidelines, III.B.

[4] *See* Security Guidelines, III.C.

[5] *See* Security Guidelines, III.C.

[6] *See* Security Guidelines, II.B, and III.D. Further, the Agencies note that, in addition to contractual obligations to a financial institution, a service provider may be required to implement its own comprehensive information security program in accordance with the Safeguards Rule promulgated by the Federal Trade Commission (FTC), 12 CFR part 314.

[7] The FTC estimates that nearly 10 million Americans discovered they were victims of some form of identity theft in 2002. *See* The Federal Trade Commission. *Identity Theft Survey Report* (September 2003), available at *http://www.ftc.gov/os/2003/09/synovatereport.pdf.*

[8] Institutions should also conduct background checks of employees to ensure that the institution does not violate 12 U.S.C. 1829, which prohibits an institution from hiring an individual convicted of certain criminal offenses or who is subject to a prohibition order under 12 U.S.C. 1818(e)(6).

[9] Under the Guidelines, an institution's *customer information systems* consist of all of the methods used to access, collect, store, use, transmit, protect, or dispose of customer information, including the systems maintained by its service providers. *See* Security Guidelines, I.C.2.d.

[10] *See* FFIEC Information Technology Examination Handbook, Information Security Booklet, Dec. 2002 available at *http://ithandbook.ffiec.gov/it-booklets/information-security.aspx* Federal Reserve SR 97–32, Sound Practice Guidance for Information Security for Networks, Dec. 4, 1997; OCC Bulletin 2000–14, ''Infrastructure Threats—Intrusion Risks'' (May 15, 2000), for additional guidance on preventing, detecting, and responding to intrusions into financial institutions computer systems.

[11] *See* Federal Reserve SR Ltr. 13–19, Guidance on Managing Outsourcing Risk, Dec. 5, 2013; OCC Bulletin 2013–29, ''Third-Party Relationships—Risk Management Guidance,'' Oct. 30, 2013; and FDIC FIL 44–08, Guidance for Managing Third Party Risk, June 6, 2008 and FIL 68–99, Risk Assessment Tools and Practices for Information System Security, July 7, 1999.

[12] An institution's obligations to file a SAR is set out in the Agencies' SAR regulations and Agency guidance. *See, for example, 12 CFR 21.11* (national banks, Federal branches and agencies); 12 CFR 163.180 (Federal savings associations); 12 CFR 208.62 (State member banks); 12 CFR 211.5(k) (Edge and agreement corporations); 12 CFR 211.24(f) (uninsured State branches and agencies of foreign banks); 12 CFR 225.4(f) (bank holding companies and their nonbank subsidiaries); and 12 CFR part 353 (State non-member banks). National banks must file SARs in connection with computer intrusions and other computer crimes. *See* OCC Bulletin 2000–14, ''Infrastructure Threats—Intrusion Risks'' (May 15, 2000); Advisory Letter 97–9, ''Reporting Computer Related Crimes'' (November 19, 1997) (general guidance still applicable though instructions for new SAR form published in 65 FR 1229, 1230 (January 7, 2000)). *See also* Federal Reserve SR 01–11, Identity Theft and Pretext Calling, Apr. 26, 2001.

[13] *See* FFIEC Information Technology Examination Handbook, Information Security Booklet, Dec. 2002, pp. 68–74.

[14] The institution should, therefore, ensure that it has reasonable policies and procedures in place, including trained personnel, to respond appropriately to customer inquiries and requests for assistance.

[15] Currently, the FTC Web site for the ID Theft brochure and the FTC Hotline phone number are *http://www.consumer.gov/idtheft* and 1–877–IDTHEFT. The institution may also refer customers to any materials developed pursuant to section 151(b) of the FACT Act (educational materials developed by the FTC to teach the public how to prevent identity theft).

PART 391—FORMER OFFICE OF THRIFT SUPERVISION REGULATIONS

■ 4. The authority citation for part 391 is revised to read as follows:

Authority: 12 U.S.C. 1819 (Tenth).

Subpart A also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; 1881–1884; 15 U.S.C. 1681w; 15 U.S.C. 6801; 6805.

Subpart C also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p-1; and 1881–1884; 15 U.S.C. 1681m; 1681w.

Subpart D also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 42 U.S.C. 4012a; 4104a; 4104b; 4106; 4128.

Subpart E also issued under 12 U.S.C. 1467a; 1468; 1817; 1831i.

Subpart B—[Removed and Reserved]

■ 5. Remove and reserve subpart B consisting of §§ 391.10 through 391.14, appendix A to subpart B of part 391, and appendix B to subpart B of part 391.

Dated at Washington, DC, this 21st day of January, 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–01325 Filed 1–29–15; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 329

RIN 3064–AE30

Regulatory Capital Rules, Liquidity Coverage Ratio: Proposed Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC invites comment on a notice of proposed rulemaking (NPR or proposed rule) that would amend the definition of ''qualifying master netting agreement'' under the regulatory capital rules, and the liquidity coverage ratio rule. The FDIC also is proposing to amend the definitions of ''collateral agreement,'' ''eligible margin loan,'' and ''repo-style transaction'' under the regulatory capital rules. The amendments are designed to ensure that the regulatory capital and liquidity treatment of certain financial contracts generally would not be affected by implementation of special resolution regimes in foreign jurisdictions if such regimes are substantially similar to Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Federal Deposit Insurance Act in the United States, or by the International Swaps and Derivative Association Resolution Stay Protocol that provide for contractual submission to such regimes. In December 2014, the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Board) adopted a joint interim final rule that is related to this proposed rule.

DATES: Comments must be received March 31, 2015.

ADDRESSES: You may submit comments, identified by RIN 3064–AE30, by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@fdic.gov.* Include the RIN 3064–AE30 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN 3064–AE30 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–I002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Ryan Billingsley, Chief, Capital Policy Section, *rbillingsley@fdic.gov;* Benedetto Bosco, Capital Markets Policy Analyst, *bbosco@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or David Wall, Assistant General Counsel, *dwall@fdic.gov;* Michael Phillips, Counsel, *mphillips@fdic.gov;* Ann Battle, Counsel, *abattle@fdic.gov;* Rachel Ackmann, Senior Attorney, *rackmann@fdic.gov;* Grace Pyun, Senior Attorney, *gpyun@fdic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Summary

The regulatory capital rules of the Board, the OCC, and the FDIC (collectively, the agencies) permit a banking organization to measure exposure from certain types of financial contracts on a net basis and recognize the risk-mitigating effect of financial collateral for other types of exposures, provided that the contracts are subject to a ''qualifying master netting agreement'' that provides for certain rights upon a counterparty default.[1] The agencies, by rule, have defined a qualifying master netting agreement as a netting agreement that permits a banking organization to terminate, apply close-out netting, and promptly liquidate or set-off collateral upon an event of default of the counterparty (default rights), thereby reducing its counterparty exposure and market risks.[2] On the whole, measuring the amount of exposure of these contracts on a net basis, rather than a gross basis, results in a lower measure of exposure, and thus, a lower capital requirement, under the regulatory capital rules.

The current definition of ''qualifying master netting agreement'' recognizes that default rights may be stayed if the financial company is in receivership, conservatorship, or resolution under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[3] or under the Federal Deposit Insurance Act (FDI Act).[4] Accordingly, transactions conducted under netting agreements where default rights may be stayed under Title II of the Dodd-Frank Act or the FDI Act may qualify for the favorable capital treatment described above. However, the current definition of ''qualifying master netting agreement'' does not recognize that default rights may be stayed where a master netting agreement is subject to limited stays under foreign special resolution regimes or where counterparties agree through contract that a special resolution regime would apply. When the agencies adopted the current definition of ''qualifying master netting agreement,'' no other jurisdiction had adopted a special resolution regime relevant to the definition, and no banking organizations

[1] See 12 CFR part 3 (OCC), 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). The term ''banking organization'' includes national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), as well as top-tier savings and loan holding companies domiciled in the United States, except for certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

[2] See section 2 of the regulatory capital rules.

[3] See 12 U.S.C. 5390(c)(8) through (16).

[4] See 12 U.S.C. 1821(e)(8) through (13). The definition also recognizes that default rights may be stayed under any similar insolvency law applicable to government sponsored enterprises (GSEs). Generally under the agencies' regulatory capital rules, government-sponsored enterprise means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. See regulatory capital rules Section 2.

had communicated to the agencies an intent to enter into contractual amendments to clarify that bilateral over-the-counter (OTC) derivatives transactions are subject to certain provisions of certain U.S. and foreign special resolution regimes.

In recent months, the European Union (EU) finalized the Bank Recovery and Resolution Directive (BRRD), which prescribes aspects of a special resolution regime that EU member nations should implement. On January 1, 2015, most of the provisions of the BRRD are expected to take effect in a number of the EU member states. In addition, several U.S. banking organizations have opted to adhere to the International Swaps and Derivatives Association's (ISDA) Resolution Stay Protocol (ISDA Protocol),[5] which provides for amendments to the terms of ISDA Master Agreements [6] between counterparties that adhere to the ISDA Protocol to stay certain default rights and other remedies provided under the agreement. The effective date of certain provisions of the ISDA Protocol also is January 1, 2015. This expected implementation would generally mirror steps taken in the United States to implement a special resolution regime under Title II of the Dodd-Frank Act.

A master netting agreement under which default rights may be stayed under the BRRD or that incorporates the ISDA Protocol would no longer qualify as a qualifying master netting agreement under the agencies' current regulatory capital and liquidity rules. This would result in considerably higher capital and liquidity requirements.

Accordingly, under this NPR, the FDIC proposes to permit an otherwise qualifying master netting agreement to qualify if (i) default rights under the agreement may be stayed under a qualifying foreign special resolution regime or (ii) the agreement incorporates a qualifying special resolution regime by contract. Through these proposed revisions, the proposed rule would maintain the existing treatment for these contracts for purposes of the regulatory capital and liquidity rules, while recognizing the recent changes contemplated by the BRRD and the ISDA Protocol.

The proposed rule also would revise certain other definitions of the regulatory capital rules to make various conforming changes designed to ensure that a banking organization may continue to recognize the risk mitigating effects of financial collateral [7] received in a secured lending transaction, repo-style transaction, or eligible margin loan for purposes of the regulatory capital and liquidity rules, while recognizing the recent changes contemplated by the BRRD and banking organizations that have adhered to the ISDA Protocol. Specifically, the proposed rule would revise the definition of ''collateral agreement,'' ''eligible margin loan,'' [8] and ''repo-style transaction'' [9] to provide that a counterparty's default rights may be stayed under a foreign special resolution regime or, if applicable, under a special resolution regime incorporated by contract.[10] The FDIC requests comment on all aspects of these definitions.

II. Background

A. U.S. Resolution Regime

It is common market practice for bilateral derivatives and certain other types of financial contracts entered into by large banking organizations to permit a non-defaulting counterparty to exercise early termination rights and other contractual remedies upon a counterparty (or a related entity) experiencing an event of default. These contractual provisions are generally recognized as a credit risk mitigant because the provisions allow a non-defaulting party the uninterrupted right to close-out, net, and liquidate any collateral securing its claim under the contract upon a counterparty's default.

However, as the failure of Lehman Brothers demonstrated, the uninterrupted exercise of such rights by counterparties of a globally-active financial company with a significant derivatives portfolio could impede the orderly resolution of the financial company and pose risks to financial stability. The United States has enacted laws that impose a limited stay on the exercise of early termination rights and other remedies with regard to qualified financial contracts (such as OTC derivatives, securities financing transactions, and margin loans) with insured depository institutions in resolution under the FDI Act and, in 2010, with financial companies in resolution under Title II of the Dodd-Frank Act.

B. Foreign Special Resolution Procedures and the ISDA Protocol

In recognition of the issues faced in the financial crisis concerning resolution of globally-active financial companies, the EU issued the BRRD on April 15, 2014, which requires EU member states to implement a resolution mechanism by December 31, 2014, in order to increase the likelihood for successful national or cross-border resolutions of a financial company organized in the EU.[11] The BRRD contains special resolution powers, including a limited stay on certain financial contracts that is similar to the stays provided under Title II of the Dodd-Frank Act and the FDI Act.

[5] See ISDA Protocol at *http://assets.isda.org/media/f253b540-25/958e4aed.pdf/*.

[6] The ISDA Master Agreement is a form of agreement that governs OTC derivatives transactions and is used by a significant portion of the parties to bilateral OTC derivatives transactions, including large, internationally active banking organizations. Furthermore, the ISDA Master Agreement generally creates a single legal obligation that provides for the netting of all individual transactions covered by the agreement.

[7] Generally, under the agencies' regulatory capital rules, financial collateral means collateral in the form of: (i) Cash on deposit with the banking organization (including cash held for the banking organization by a third-party custodian or trustee); (ii) gold bullion; (iii) long-term debt securities that are not resecuritization exposures and that are investment grade; (iv) short-term debt instruments that are not resecuritization exposures and that are investment grade; (v) equity securities that are publicly traded; (vi) convertible bonds that are publicly traded; or (vii) money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily. In addition, the regulatory capital rules also require that the banking organization have a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent). See regulatory capital rule, Section 2.

[8] Generally under the agencies' regulatory capital rules, eligible margin loan means an extension of credit where: (i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold; (ii) the collateral is marked-to-fair value daily, and the transaction is subject to daily margin maintenance requirements; and (iii) the extension of credit is conducted under an agreement that provides the banking organization with default rights, provided that any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs. See regulatory capital rule, Section 2. In addition, in order to recognize an exposure as an eligible margin loan a banking organization must comply with the requirements of section 3(b) of the regulatory capital rules with respect to that exposure.

[9] Generally, under the agencies' regulatory capital rules, repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the banking organization acts as agent for a customer and indemnifies the customer against loss, provided that: (1) The transaction is based solely on liquid and readily marketable securities, cash, or gold; (2) the transaction is marked-to-fair value daily and subject to daily margin maintenance requirements; (3) the transaction provides certain default rights. See regulatory capital rule, Section 2. In addition, in order to recognize an exposure as a repo-style transaction for purposes of this subpart, a banking organization must comply with the requirements of section 3(e) of the regulatory capital rules.

[10] See 12 CFR part 32.

[11] On January 1, 2015, most of the provisions of the BRRD are expected to take effect in a number of the EU member states.

Therefore, the operations of U.S. banking organizations located in jurisdictions that have implemented the BRRD could become subject to an orderly resolution under the BRRD, including the application of a limited statutory stay of a counterparty's right to exercise early termination rights and other remedies with respect to certain financial contracts. The BRRD is generally designed to be consistent with the *Key Attributes of Effective Resolution Regimes for Financial Institutions* (Key Attributes),[12] which were initially adopted by the Financial Stability Board (FSB) [13] of the G–20[14] member nations in October 2011, and is designed to provide a standard for the responsibilities and powers that national resolution regimes should have to resolve a failing systemically important financial institution.

ISDA published the ISDA Protocol on November 12, 2014, which provides for amendments to ISDA Master Agreements to stay certain early termination rights and other remedies provided under the agreement. As of November 12, 2014, 18 global financial institutions, including several of the largest U.S. banking organizations,[15] have opted to adhere to the ISDA Protocol and thereby would modify ISDA Master Agreements among those adhering parties. Like other qualified financial contracts, OTC derivatives transactions executed under standard ISDA Master Agreements allow a party to terminate the agreement immediately upon an event of default of its counterparty, including if its counterparty (or a related entity) [16] enters insolvency or similar proceedings.

The contractual amendments effectuated pursuant to the ISDA Protocol would apply the provisions of Title II of the Dodd-Frank Act and the FDI Act concerning limited stays of termination rights and other remedies in qualified financial contracts to ISDA Master Agreements between adhering counterparties, including adhering counterparties that are not otherwise subject to U.S. law. The amendments also would apply substantially similar provisions of certain non-U.S. laws, to ISDA Master Agreements between adhering counterparties that are not otherwise subject to such laws.[17] The contractual amendments effectuated pursuant to the ISDA Protocol would permit a party that has agreed to adhere to the ISDA Protocol to exercise early termination rights and other remedies only to the extent that it would be entitled to do so under the special resolution regime applicable to its adhering counterparties (or related entities, as applicable).[18]

C. Description of Relevant Provisions of the Regulatory Capital and the Liquidity Coverage Ratio Rules

As noted above, the agencies' regulatory capital rules permit a banking organization to measure exposure from certain types of financial contracts on a net basis, provided that the contracts are subject to a qualifying master netting agreement or other agreement that contains specific provisions. Specifically, under the current regulatory capital rules, a banking organization with multiple OTC derivatives that are subject to a qualifying master netting agreement would be able to calculate a net exposure amount by netting the sum of all positive and negative fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement and calculating a risk-weighted asset amount based on the net exposure amount. For purposes of the current supplementary leverage ratio (as applied only to advanced approaches banking organizations), a banking organization that has one or more OTC derivatives with the same counterparty that are subject to a qualifying master netting agreement would be permitted to not include in total leverage exposure cash variation margin received from such counterparty that has offset the mark-to-fair value of the derivative asset or cash collateral that is posted to such counterparty that has reduced the banking organization's on-balance sheet assets.[19]

In addition, the agencies' current rules permit a banking organization to recognize the risk-mitigating effect of financial collateral for other types of collateralized exposures. Specifically, for risk-based capital purposes, a banking organization with a securities financing transaction that meets the definition of a repo-style transaction with financial collateral, a margin loan that meets the definition of an eligible margin loan with financial collateral, or an OTC derivative contract

[12] The Key Attributes are available at *www.financialstabilityboard.org/publications/r_111104cc.pdf*. See specifically Key Attributes 4.1–4.4 regarding set-off, netting, collateralization and segregation of client assets and Appendix I Annex 5 regarding temporary stays on early termination rights. In October 2014, the FSB adopted a 2014 version of the Key Attributes that incorporates new annexes to provide additional guidance with respect to specific Key Attributes. No changes were made to the text of the twelve Key Attributes of October 2011.

[13] The FSB is an international body that monitors and makes recommendations about the global financial system. The FSB coordinates the regulatory, supervisory, and other financial sector policies of national financial authorities and international standard-setting bodies.

[14] The G–20 membership comprises a mix of the world's largest advanced and emerging economies. The G–20 members are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States, and the European Union. Following the most recent financial crisis, leaders of the G–20 member nations recognized that the orderly cross-border resolution of a globally-active financial company requires all countries to have effective national resolution regimes to resolve failing financial companies in an orderly manner and that national resolution regimes should be consistent with one another. Subjecting the same financial company to conflicting legal rules, procedures, and mechanisms across jurisdictions can create uncertainty, instability, possible systemic contagion, and higher costs of resolution.

[15] As of November 12, 2014, the U.S. banking organizations that have agreed to adhere to the ISDA Protocol are Bank of America Corporation, Citigroup Inc., The Goldman Sachs Group, Inc., JPMorgan Chase & Co., and Morgan Stanley, and certain subsidiaries thereof. See current list of adhering parties to the ISDA Protocol at *http://www2.isda.org/functional-areas/protocol-management/protocol-adherence/20.*

[16] Under the ISDA Resolution Stay Protocol, a related entity is defined to include (i) each parent or (ii) an affiliate that is (a) a creditor support provider or (b) a specified entity.

[17] The provisions of the ISDA Protocol relating to the special resolution regimes in these jurisdictions will become effective on January 1, 2015, for ISDA Master Agreements between the 18 adhering financial companies (as of November 12, 2014). The ISDA Protocol also covers special resolution regimes in other FSB member jurisdictions so long as the regimes meet conditions specified in the ISDA Protocol relating to creditor safeguards, which are consistent with the Key Attributes.

[18] Parties adhering to the ISDA Protocol would initially be contractually subject to the statutory special resolution regimes of France, Germany, Japan, Switzerland, the United Kingdom and the United States.

[19] Under the agencies' regulatory capital rules, the general framework consists of two approaches: (1) The standardized approach, which, beginning on January 1, 2015, will apply to all banking organizations regardless of total asset size, and (2) the advanced approaches, which currently apply to large internationally active banking organizations (defined as those banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, depository institution subsidiaries of those banking organizations that use the advanced approaches rule, and banking organizations that elect to use the advanced approaches). As a general matter, the standardized approach sets forth standardized risk weights for different asset types for regulatory capital calculations, whereas, for certain assets, the advanced approaches make use of risk assessments provided by banking organizations' internal systems as inputs for regulatory capital calculations. Consistent with section 171 of the Dodd-Frank Act (codified at 12 U.S.C. 5371), a banking organization that is required to calculate its risk-based capital requirements under the advanced approaches (*i.e.,* an advanced approaches banking organization) also must determine its risk-based capital requirements under the generally applicable risk-based capital rules, which will be the standardized approach beginning on January 1, 2015). The lower—or more binding—ratio for each risk-based capital requirement is the ratio that the advanced approaches banking organization must use to determine its compliance with minimum regulatory capital requirements. See generally 12 CFR part 324.

collateralized with financial collateral may determine a net exposure amount to its counterparty according to section 37 or section 132 of the regulatory capital rules. A banking organization with multiple repo-style transactions or eligible margin loans with a counterparty that are subject to a qualifying master netting agreement may net the exposure amounts of the individual transactions under that agreement. In addition, for purposes of the supplementary leverage ratio, an advanced approaches banking organization with multiple repo-style transactions with the same counterparty that are subject to a qualifying master netting agreement would be permitted to net for purposes of calculating the counterparty credit risk component of its total leverage exposure. In general, recognition of netting results in a lower measure of risk-weighted assets and total leverage exposure than if a banking organization were to calculate its OTC derivatives, repo-style transactions, and eligible margin loans on a gross basis.

The agencies also use the concept of a qualifying master netting agreement in the current liquidity coverage ratio rule (LCR).[20] The LCR rule requires a banking organization to maintain an amount of high-quality liquid assets (the numerator) to match at least 100 percent of its total net cash outflows over a prospective 30 calendar-day period (the denominator). For derivative transactions subject to a qualifying master netting agreement, a banking organization would be able to calculate the net derivative outflow or inflow amount by netting the contractual payments and collateral that it would give to, or receive from, the counterparty over a prospective 30-day period.[21] If the derivative transactions are not subject to a qualifying master netting agreement, then the derivative cash outflows for that counterparty would be included in the net derivative cash outflow amount and the derivative cash inflows for that counterparty would be included in the net derivative cash inflow amount, without any netting and subject to the LCR rule's cap on total inflows. Recognition of netting may result in lower net cash outflows, and thus a lower LCR denominator and liquidity requirement, than if a banking organization were to calculate its inflows and outflows on its derivatives transactions on a gross basis.

III. The Proposed Rule

The proposed rule would amend the definitions of ''collateral agreement, ''eligible margin loan,'' ''qualifying master netting agreement,'' and ''repo-style transaction'' in the FDIC's regulatory capital rules and ''qualifying master netting agreement'' in the FDIC's LCR rules to ensure that the regulatory capital and liquidity treatment of OTC derivatives, repo-style transactions, eligible margin loans, and other collateralized transactions would be unaffected by the adoption of various foreign special resolution regimes and the ISDA Protocol. In particular, the proposed rule would amend these definitions to provide that a relevant netting agreement or collateral agreement may provide for a limited stay or avoidance of rights where the agreement is subject by its terms to, or incorporates, certain resolution regimes applicable to financial companies, including Title II of the Dodd-Frank Act, the FDI Act, or any foreign resolution regime that is substantially similar to Title II of the Dodd-Frank Act or the FDI Act.

In determining whether the laws of foreign jurisdictions are ''similar'' to the FDI Act and Title II of the Dodd-Frank Act, the FDIC, jointly with the Board and OCC, intends to consider all aspects of these U.S. laws, including all aspects of stays provided thereunder.[22] Relevant factors include, for instance, creditor safeguards or protections provided under a special foreign resolution regime as well as the length of stay.[23]

Without the proposed rule, several banking organizations would no longer be permitted to recognize financial contracts as subject to a qualifying master netting agreement or satisfying the criteria necessary for the current regulatory capital and liquidity treatment, and would be required to measure exposure from these contracts on a gross, rather than net, basis. The proposed rule would allow for continuation of the existing netting treatment for these contracts for purposes of the regulatory capital and liquidity rules. Implementation of consistent, national resolution regimes on a global basis furthers the orderly resolution of internationally active financial companies, and enhances financial stability. Moreover, the development of the ISDA Protocol furthers certain principles of Title II of the Dodd-Frank Act and the FDI Act (in instances where a counterparty is a U.S. entity or its subsidiary) with respect to counterparties who are not otherwise subject to U.S. law.

In addition, the FDIC intends to incorporate the definition of ''qualifying master netting agreement'', once finalized, into rules that establish minimum margin requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants (covered swap entities) subject to FDIC supervision. On September 24, 2014, the OCC, Board, FDIC, the Farm Credit Administration, and the Federal Housing Finance Agency published a notice of proposed rulemaking that would establish minimum margin requirements for covered swap entities subject to agency supervision (2014 swap margin NPR).[24] The 2014 swap margin NPR would permit a covered swap entity to calculate variation margin requirements on an aggregate, net basis under an eligible master netting agreement (EMNA) with a counterparty. The comment period for the 2014 swap margin NPR closed on November 24, 2014. The OCC, Board, FDIC, Farm Credit Administration and Federal Housing Finance Agency are reviewing the comments received and drafting a final rule. Ultimately, the Federal banking agencies intend to align, as appropriate, the definitions of EMNA and qualifying master netting agreement in their respective regulations pertaining to swap margin requirements, regulatory capital requirements, liquidity requirements, and lending limits.

In December 2014, the OCC and the Board adopted a joint interim final rule that is identical to this proposed rule.

IV. Request for Comments

The FDIC is interested in receiving comments on all aspects of the proposed

[20] The agencies' LCR rules are provided in 12 CFR part 50 (OCC); 12 CFR part 249 (Board); and 12 CFR part 329 (FDIC).

[21] The LCR final rule provides that foreign currency transactions that meet certain criteria can be netted regardless of whether those transactions are covered by a qualified master netting agreement. 79 FR 61440, 61532–33 (October 10, 2014).

[22] See 12 U.S.C. 1821(e)(8) through (13) and 5390(c)(8) through (16). As noted above, the ISDA Protocol covers only resolution regimes that are considered to be consistent with the principles of the Key Attributes. Therefore, it is also expected that any limited statutory stay under foreign law determined for purposes of this proposed rule to be similar to the FDI Act and Title II of the Dodd-Frank Act would also be consistent with the relevant principles of the Key Attributes.

[23] Under Title II of the Dodd-Frank Act, counterparties are stayed until 5:00 p.m. on the business day following the date of appointment of a receiver from exercising termination, liquidation, or netting rights under the qualified financial contract. 12 U.S.C. 5390(c)(10)(B)(i)(I). If the qualified financial contracts are transferred to a solvent third party before the stay expires, the counterparty is permanently enjoined from exercising such rights based upon the appointment of the receiver, but is not stayed from exercising such rights based upon other events of default. See 12 U.S.C. 5390(c)(10)(B)(i)(II).

[24] 79 FR 57348 (September 24, 2014).

rule. In particular, do the amendments to the definitions of ''qualifying master netting agreement,'' ''collateral agreement,'' ''repo-style transaction,'' and ''eligible margin loan'' ensure that the regulatory capital and liquidity treatment of OTC derivatives, repo-style transactions, eligible margin loans and other collateralized transactions is unaffected by the ISDA Protocol and the BRRD? Is there any reason why the FDIC should not revise the above mentioned definitions?

The ISDA Protocol also provides for limited stays of termination rights for cross-defaults resulting from affiliate insolvency proceedings under a limited number of U.S. general insolvency regimes, including the U.S. Bankruptcy Code.[25] The proposed rule does not address this portion of the ISDA Protocol because this portion of the ISDA Protocol does not take effect on January 1, 2015. Instead it takes effect upon the effective date of implementing regulations in the United States. The FDIC requests comment on whether the definitions of ''qualifying master netting agreement,'' ''collateral agreement,'' ''repo-style transaction,'' and ''eligible margin loan'' should also be amended to recognize the stay of default rights in this context.

Question 1: The proposed rule would prevent an increase in regulatory capital by allowing a ''qualifying master netting agreement'' to include stays that may be imposed by the laws of a foreign jurisdiction as a result of the receivership, conservatorship, or resolution of a foreign financial entity. Given the recent introduction of stays through contracts under the ISDA protocol, as well as in foreign jurisdictions, the FDIC seeks comment on the appropriateness of the proposed rule's effect on regulatory capital.

Question 2: What was the effectiveness of netting agreements during the financial crisis?

Question 3: How were cross-border netting agreements treated by U.S. and foreign courts?

Question 4: What legal and operational impediments to netting exist today?

Question 5: Does netting of exposures present an accurate reflection of the risk of the underlying transactions and assets covered by this proposal?

Question 6: What criteria should be considered when determining whether a foreign resolution regime or legal framework is substantially similar to Title II of the Dodd-Frank Act and the FDI Act provisions for the insolvency of insured depository institutions?

Question 7: Would the Total Loss Absorbing Capacity requirement as set forth by the Financial Stability Board ensure the presence of sufficient debt that may be bailed in to effectuate the resolution of a foreign counterparty to a U.S. bank as contemplated under the BRRD?

Question 8: What sources are available to provide funding for the resolution of a foreign counterparty to an affected U.S. bank?

Question 9: What length of stay in a resolution regime is appropriate to balance avoidance of market disruption against creditor protection?

V. Regulatory Analysis

A. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a notice of proposed rulemaking, to prepare an Initial Regulatory Flexibility Act analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FDIC believes that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less (a small banking organization).[26] As of June 30, 2014, there were approximately 3,267 small state nonmember banks and 306 small state savings associations under the FDIC's supervisory jurisdiction.

The proposed rule is expected only to apply to banking organizations that adhere to the ISDA Protocol, which generally are entities that engage in a substantial amount of cross-border derivatives transactions. Small entities generally would not fall into this category. Accordingly, the FDIC believes that this proposed rule would not have a significant economic impact on small banking organizations supervised by the FDIC and therefore believes that there are no significant alternatives to the issuance of this proposed rule that would reduce the economic impact on small banking organizations supervised by the FDIC.

The FDIC requests comment on its conclusion that the proposed rule would not have a significant economic impact on a substantial number of small entities.

B. Solicitation of Comments on Use of Plain Language

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

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

C. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3521) (''PRA''), the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The FDIC reviewed the proposed rule and determined that it would not produce any new collection of information pursuant to the PRA.

[25] Under the ISDA Protocol, upon commencement of such proceedings, adhering counterparties would be subject to a limited stay of their termination rights and other remedies. The limited stay does not apply if a direct counterparty is subject to general insolvency proceedings. The stay also does not apply to payment or delivery defaults or to defaults that are not directly or indirectly related to the affiliate insolvency proceedings.

[26] See 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

List of Subjects

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 329

Administrative practice and procedure, Banks, banking, Federal Deposit Insurance Corporation, FDIC, Liquidity, Reporting and recordkeeping requirements.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the supplementary information, the Federal Deposit Insurance Corporation proposes to amend 12 CFR chapter III parts 324 and 329 to read as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 1. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 2. Amend § 324.2 by:

■ a. Revising the definitions of ''Collateral agreement,'' ''Eligible margin loan,'' ''Qualifying master netting agreement,'' and ''Repo-style transaction''; and

■ b. Renumbering the remaining footnotes throughout the part.

The revisions read as follows:

* * * * *

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to a FDIC-supervised institution for a single financial contract or for all financial contracts in a netting set and confers upon the FDIC-supervised institution a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the FDIC-supervised institution with a right to close out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the FDIC-supervised institution's exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(1) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [4] to the U.S. laws referenced in this paragraph (1) in order to facilitate the orderly resolution of the defaulting counterparty; or

(2) Where the agreement is subject by its terms to any of the laws referenced in paragraph (1) of this definition.

* * * * *

Eligible margin loan means:

(1) An extension of credit where:

(i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold;

(ii) The collateral is marked to fair value daily, and the transaction is subject to daily margin maintenance requirements; and

(iii) The extension of credit is conducted under an agreement that provides the FDIC-supervised institution the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [5] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty.

(2) In order to recognize an exposure as an eligible margin loan for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(b) with respect to that exposure.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, insolvency, conservatorship, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the FDIC-supervised institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [6] to the U.S. laws referenced in this paragraph (i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a FDIC-supervised institution must comply with the requirements of § 324.3(d) with respect to that agreement.

* * * * *

[4] The FDIC expects to evaluate jointly with the Board and OCC whether foreign special resolution regimes meet the requirements of this proposed rule.

[5] The FDIC expects to evaluate jointly with the Board and OCC whether foreign special resolution regimes meet the requirements of this proposed rule.

[6] The FDIC expects to evaluate jointly with the Board and OCC whether foreign special resolution regimes meet the requirements of this proposed rule.

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the FDIC-supervised institution acts as agent for a customer and indemnifies the customer against loss, provided that:

(1) The transaction is based solely on liquid and readily marketable securities, cash, or gold;

(2) The transaction is marked-to-fair value daily and subject to daily margin maintenance requirements;

(3)(i) The transaction is a ''securities contract'' or ''repurchase agreement'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act, or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve's Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the FDIC-supervised institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [7] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) The transaction is:

(*1*) Either overnight or unconditionally cancelable at any time by the FDIC-supervised institution; and

(*2*) Executed under an agreement that provides the FDIC-supervised institution the rights to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set off collateral promptly upon an event of counterparty default.

(4) In order to recognize an exposure as a repo-style transaction for purposes of this subpart, an FDIC-supervised institution must comply with the requirements of § 324.3(e) of this part with respect to that exposure.

* * * * *

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 3. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 4. Amend § 329.3 by revising the definition of ''Qualifying master netting agreement'' and renumbering the remaining footnotes throughout the part to read as follows:

§ 329.3 Definitions.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, insolvency, conservatorship, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the FDIC-supervised institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [1] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a FDIC-supervised institution must comply with the requirements of § 329.4(a) with respect to that agreement.

* * * * *

Dated: January 21, 2015.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–01324 Filed 1–29–15; 8:45 am]

BILLING CODE 6714–01–P

[7] The FDIC expects to evaluate jointly with the Board, FDIC, and OCC whether foreign special resolution regimes meet the requirements of this proposed rule.

[1] The FDIC expects to evaluate jointly with the Board and OCC whether foreign special resolution regimes meet the requirements of this proposed rule.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 334 and 391

RIN 3064–AE29

Transferred OTS Regulations Regarding Fair Credit Reporting and Amendments; Amendment to the ''Creditor'' Definition in Identity Theft Red Flags Rule; Removal of FDIC Regulations Regarding Fair Credit Reporting Transferred to the Consumer Financial Protection Bureau

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (Proposed Rule), the Federal Deposit Insurance Corporation (FDIC) proposes to make several amendments to its regulations covering ''Fair Credit Reporting.''

First, the FDIC proposes to rescind and remove from the Code of Federal Regulations 12 CFR part 391, subpart C (part 391, subpart C), entitled ''Fair Credit Reporting.'' This subpart was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) in connection with the implementation of applicable provisions of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The requirements for State savings associations in part 391, subpart C are substantively similar to those in the

FDIC's 12 CFR part 334 (part 334), also entitled ''Fair Credit Reporting,'' and is applicable for all insured depository institutions (''IDIs'') for which the FDIC has been designated the appropriate Federal banking agency.

The FDIC proposes to modify the scope of 12 CFRs 334.1(b), 334.90(a), and 334.91(a) to include State savings associations and their subsidiaries to conform to the scope of the FDIC's current supervisory responsibilities as the appropriate Federal banking agency. The FDIC also proposes to add new subsections to define ''State savings association'' as having the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act (FDI Act).

Second, the FDIC proposes to amend the definitional portion of its Identity Theft Red Flags regulations to be in conformance with the Red Flag Program Clarification Act of 2010.

Third, the FDIC proposes to rescind and remove from the Code of Federal Regulations those portions of the FDIC's ''Fair Credit Reporting'' regulations where the rule writing authority was provided to the Consumer Financial Protection Bureau (''CFPB'') in the Dodd-Frank Act. The FDIC will continue to examine for and enforce violations of these regulations for all IDIs for which the FDIC has been designated the appropriate Federal banking agency.

Consistent with this part of the proposal, the FDIC also proposes to make a technical change in one provision in its version of the Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation.

DATES: Comments must be received on or before March 31, 2015.

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

- *FDIC Web site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the agency Web site.
- *FDIC Email: Comments@fdic.gov.* Include RIN #3064–AE29 on the subject line of the message.
- *FDIC Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary consisting of no more than five single-spaced pages. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be requested from the Public Information Center by telephone at 1–877–275–3342 or 1–703–562–2200.

FOR FURTHER INFORMATION CONTACT: Sandra Barker, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–3615; Jeffrey Kopchik, Senior Policy Analyst, Division of Risk Management Supervision, (703) 254–0459; Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424.

SUPPLEMENTARY INFORMATION:

I. Proposed Removal of Transferred OTS Regulations Regarding Fair Credit Reporting and Amendments to 12 CFR Part 334 of FDIC's Rules and Regulations

A. Background

The Dodd-Frank Act

The Dodd-Frank Act [1] provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, codified at 12 U.S.C. 5411, the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies.[2] Section 316(b) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(b), provided the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provided that if such materials were in effect on the day before the transfer date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[3]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations whose deposits are insured by the FDIC (''State savings associations'') to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

As noted, on June 14, 2011, pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[4] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other

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

[2] Section 312 of the Dodd-Frank Act, codified at 12 U.S.C. 5412.

[3] 76 FR 39247 (July 6, 2011).

[4] 76 FR 47652 (Aug. 5, 2011).

FDIC rules, amending them, or rescinding them, as appropriate.

One of the OTS rules transferred to the FDIC governed OTS oversight of the Fair Credit Reporting regulations, which implemented the Fair Credit Reporting Act (FCRA),[5] in the context of State savings associations. The OTS rule, formerly found at 12 CFR part 571, was transferred to the FDIC[6] and is now found in the FDIC's rules at part 391, subpart C, entitled ''Fair Credit Reporting.'' Before the transfer of the OTS rules and continuing today, the FDIC's rules contained part 334, also entitled ''Fair Credit Reporting,'' a rule governing FDIC regulation with respect to IDIs for which the FDIC has been designated the appropriate Federal banking agency. After careful review and comparison of part 391, subpart C and part 334, the FDIC proposes to rescind part 391, subpart C, because, as discussed below, it is substantively redundant to existing part 334 and simultaneously we propose to make technical conforming edits to our existing rule.

B. FDIC's Existing 12 CFR Section 334.2 and Former OTS's 12 CFR Section 571.2 (Transferred to FDIC's Part 391, Subpart C, as 12 CFR Section 391.20)

On November 22, 2005, the FDIC, OTS, OCC, FRB and NCUA (''the Agencies'') jointly published rules in the **Federal Register**[7] to implement section 411 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act),[8] which amended section 604 of the FCRA.[9] Section 411 of the FACT Act generally limited the ability of creditors to obtain and use medical information in connection with credit eligibility determinations and the ability of consumer reporting agencies to disclose medical information, as well as restricting the sharing of medical information and other medically related information with affiliates.[10] That section required the Agencies to issue regulations on several aspects related to the medical privacy amendment.

Although Dodd-Frank Act transferred the 2005 medical privacy regulations to the CFPB, as discussed below, the Agencies issued a regulation in the ''General Provisions'' portion of the Fair Credit Reporting regulations that remains in effect in the Agencies' regulations today.

That regulation related to ''examples'' issued in any regulation in the Fair Credit Reporting part. The OTS regulation, stated: ''The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.''[11] The concurrently issued FDIC regulation contains identical language.[12]

The OTS regulation issued at section 391.20 was amended slightly because it was placed in a subpart of section 391: The word ''part'' was replace by ''subpart.'' Nevertheless, the portion of the OTS regulation that applied to State savings associations and their subsidiaries, originally codified at 12 CFR part 571 and subsequently transferred to FDIC's part 391, subpart C, is substantively similar to the current FDIC regulations codified at 12 CFR part 334. Therefore, to eliminate redundancy and streamline its regulations, the FDIC will rescind section 391.20.

C. FDIC's Existing 12 CFR Section 334.83 and Former OTS's 12 CFR Section 571.83 (Transferred to FDIC's Part 391, Subpart C, as 12 CFR Section 391.21)

Section 216 of the FACT Act added a new section 628 to the FCRA that, in general was designed to protect a consumer against the risks associated with the unauthorized access to information about a consumer contained in a consumer report, such as fraud and related crimes including identity theft.[13] Specifically, section 216 required each of the Agencies, including the Federal Trade Commission (FTC), to adopt a regulation with respect to the entities subject to its enforcement authority ''requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from a consumer report for a business purpose to properly dispose of any such information or compilation.''[14] The FDIC, OCC, FRB and OTS jointly published their rules in the **Federal Register** on December 28, 2004.[15] The FDIC and OTS regulations were identical.[16] Neither regulation contained a scope provision, because each regulation referred to the respective agency's version of the Interagency Guidelines Establishing Information Security Standards, which itself contained a scope provision.[17]

In 2007, the Agencies jointly issued rules pursuant to section 114 of the FACT Act, which dealt with identity theft ''red flag'' rules and rules on the duties of credit card issuers to validate notifications of changes of address under certain circumstances,[18] as discussed in more detail below. Although those regulations were nearly identical from agency to agency, the OTS unilaterally amended its disposal regulation, as part of that rulemaking, to include a scope provision.[19] The OTS explained that that amendment was nonsubstantive and technical in nature, caused by the placement of the address discrepancy regulation in the same subpart as the disposal regulation.[20] No other Agency amended its disposal regulation.

After careful comparison of the FDIC's disposal regulation with the transferred OTS rule in part 391, subpart C, the FDIC has concluded that, with the exception of the scope provision, which now includes ''State savings associations whose deposits are insured by the Federal Deposit Insurance Corporation,''[21] the transferred OTS rule is substantively redundant. Therefore, based on the foregoing, the

[5] 15 U.S.C. 1681a, *et seq.*

[6] The Dodd-Frank Act transferred the rule-writing authority of several parts of the ''Fair Credit Reporting'' regulations contained in parts 334 and 571, as well as the regulations of the OCC, FRB, and National Credit Union Administration (''NCUA''), to the newly created CFPB. *See* sections 1061 and 1088, codified at 12 U.S.C. 5581, 15 U.S.C. 1666. When the OTS regulations for state savings associations were transferred to part 391, only those portions of the regulation that were retained by the FDIC were included.

[7] 70 FR 70664 (Nov. 22, 2005).

[8] Public Law 108–159, 117 Stat. 1952, 1999–2002 (2003).

[9] 15 U.S.C. 1681b.

[10] 70 FR 70664 (Nov. 22, 2005).

[11] 12 CFR 571.2.

[12] 12 CFR 334.2.

[13] Public Law 108–159, 117 Stat. at 1985–86; 15 U.S.C. 1681w.

[14] *Id.*

[15] 69 FR 77610 (Dec. 28, 2004).

[16] 12 CFR 334.83, 571.83 (2004).

[17] *Id.* (both regulations stated, in relevant part, ''You must properly dispose of any consumer information that you maintain or otherwise possess in accordance with the Interagency Guidelines Establishing Information Security Standards . . . to the extent the Guidelines are applicable to you.''). Both the FDIC's and the OTS's Interagency Guidelines were placed in the Safety and Soundness regulations, parts 364 and 570, respectively.

[18] 72 FR 63718 (Nov. 9, 2007). That rulemaking also included rules issued pursuant to section 315 of the FACT Act, which required the Agencies to issue joint regulations that provide guidance regarding reasonable policies and procedures that a user of a consumer report should employ when the user receives a notice of an address discrepancy. The rule-writing authority for that rule was given to the CFPB in the Dodd-Frank Act.

[19] *See* 12 CFR 571.83(a) (2007).

[20] 72 FR at 63739.

[21] The scope provision of the original 2007 amendment covered all savings associations with deposits insured by the FDIC and Federal savings associations' operating subsidiaries. When the OTS disposal regulation was transferred to section 391.21, it was amended to state that the scope provision applies to ''State savings associations whose deposits are insured by the Federal Deposit Insurance Corporation,'' consistent with the authority given to the FDIC in the Dodd-Frank Act.

FDIC proposes to rescind and remove from the Code of Federal Regulations the rule located at part 391, subpart C and to make minor conforming changes to incorporate State savings associations.

There are several ways to deal with this technical difference between the FDIC and the OTS disposal regulations, including adding a scope provision to the FDIC's disposal regulation at section 334.83, an idea that was not proposed back in 2007. Instead, because of the direct reference in the disposal regulation to the Interagency Guidelines Establishing Information Security Standards, the FDIC is proposing, through a separate notice of proposed rulemaking relating to the FDIC's Safety and Soundness regulations, 12 CFR part 364, to be issued shortly, a change in the scope provision of the FDIC's version to cover State savings associations.

As a backstop for this and any future fair credit regulations, the FDIC is also proposing a change to section 334.1(b), the general scope provision of the FDIC's Fair Credit Reporting regulations, to cover State savings associations. The FDIC also proposes to add a definition of ''State savings association'' to section 334.3. That definition would have the same meaning as in section 3(b)(3) of the FDI Act, 12 U.S.C. 1813(b)(3).[22]

D. FDIC's Existing 12 CFR Sections 334.90 and 334.91 and Part 334, Appendix J, and Former OTS's 12 CFR Sections 571.82 and 571.90 and Part 571, Appendix J (Transferred to FDIC's Part 391, Subpart C, as 12 CFR Sections 391.22 and 391.23 and Part 391, Subpart C, Appendix)

As discussed above (and in some detail below), the Agencies, in 2007, jointly issued rules pursuant to section 114 of the FACT Act, which dealt with identity theft ''red flag'' rules and rules on the duties of credit card issuers to validate notifications of changes of address under certain circumstances.[23] In addition to the rules required in section 114, the Agencies also jointly issued Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation.

The FDIC's ''red flag'' rule, styled as ''duties regarding the detection, prevention, and mitigation of identity theft,'' was issued as section 334.90. The concurrently issued OTS rule was issued as section 571.90. That rule was later transferred to the FDIC rules as section 391.22. Apart from their scope provisions, the FDIC and the OTS ''red flag'' rules are substantively identical. As with the disposal rule, the scope of the transferred OTS rule covers ''a State savings association whose deposits are insured by the Federal Deposit Insurance Corporation.'' [24]

The FDIC's ''duties of card issuers regarding changes of address'' regulation was issued as section 334.91. The concurrently issued OTS rule was issued as section 571.91. That rule was later transferred to the FDIC rules as section 391.23. As with the ''red flag'' rules, apart from their scope provisions, the FDIC and OTS change of address rules are substantively identical. The OTS rule covers ''an issuer of a debit or credit card (card issuer) that is a State savings association whose deposits are insured by the Federal Deposit Insurance Corporation.'' [25]

Finally, the FDIC's Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation was issued as part 334, appendix J. The concurrently issued OTS guidelines were issued as part 571, appendix J. Those guidelines were later transferred to the FDIC rules as part 391, subpart C, appendix. The FDIC and the OTS guidelines are substantively identical.

After careful comparison of the FDIC's rules and guidelines with the transferred OTS rules and guidelines in part 391, subpart C, the FDIC has concluded that, with the exception of the scope provisions, as set out above, the transferred OTS rules and guidelines are substantively redundant. Therefore, based on the foregoing, the FDIC proposes to rescind and remove from the Code of Federal Regulations the rules located at sections 391.22 and 391.23 and guidelines located at part 391, subpart C, appendix, and to make minor conforming changes to incorporate State savings associations.

II. Proposed Amendments to Fair Credit Red Flag Identity Theft Rule and Guidelines

As discussed above, on November 9, 2007, the FDIC, OCC, FRB, NCUA, OTS, and FTC published final rules and guidelines [26] to implement the identity theft red flags provisions of section 114 of the FACT Act.[27] In addition to these agencies, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) obtained rulemaking authority for these regulations under section 615 of the FCRA, as amended by section 1088 of the Dodd-Frank Act.

Section 615 directed the covered Agencies to issue joint regulations and guidelines requiring ''financial institutions'' and ''creditors'' to develop and implement a written identity theft program to identify, detect, and respond to possible risks of identity theft relevant to them.

The 2007 final interagency rule (the Red Flags Rule) [28] included a definition of ''financial institution,'' as set forth in in section 603(t) of the FCRA, as amended in section 111 of the FACT Act.[29] That term includes ''a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.'' [30]

The Red Flags Rule [31] also included a definition of ''creditor,'' as set forth in section 603(r)(5) of the FCRA, as amended in section 111 of the FACT Act.[32] That definition referenced the definition of ''creditor'' in section 702 of the Equal Credit Opportunity Act (''ECOA''). The ECOA defines the term ''creditor'' broadly as ''any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew or continue credit.'' [33] The ECOA further defines ''credit'' as ''the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.'' [34] Regulation B, promulgated under the ECOA, defines ''credit'' in similar terms: ''the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.'' [35]

The current FDIC definition of ''creditor'' also expressly includes ''lenders such as banks, finance companies, automobile dealers,

[22] ''The term 'State savings association' means—(A) any building and loan association, savings and loan association, or homestead association; or (B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2) of this section), which is organized and operating according to the laws of the State (as defined in subsection (a)(3) of this section) in which it is chartered or organized.'' 12 U.S.C. 1813(b)(3).

[23] 72 FR 63718 (Nov. 9, 2007).

[24] 12 CFR 391.22(a).

[25] 12 CFR 391.23(a).

[26] 72 FR 63718 (Nov. 9, 2007).

[27] 15 U.S.C. 1681m(e).

[28] 12 CFR 334.90(b)(7).

[29] 15 U.S.C. 1681a(t).

[30] *Id.*

[31] 12 CFR 334.90(b)(5).

[32] 15 U.S.C. 1681a(r)(5).

[33] 15 U.S.C. 1691a(e).

[34] 15 U.S.C. 1691a(d).

[35] 12 CFR 1002.2(j).

mortgage brokers, utility companies, and telecommunications companies,'' [36] the same definition as the joint rules issued by the OCC, FRB, OTS and FTC.

Since the scope of the FDIC's red flag regulation covers ''an insured state nonmember bank, or a subsidiary of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisors),'' [37] the vast majority, but not all, of the entities covered by the FDIC regulation fall under the ''financial institutions'' definition.[38]

In contrast, the vast majority of the entities supervised by the FTC's rule would be covered by the statutory ''creditor'' definition. As such, the FTC had issued guidance on the scope of that definition. For example, in a set of answers to frequently asked questions issued in June, 2009, the FTC stated: ''Under the [Red Flags Rule], the definition of 'creditor' is broad and includes businesses or organizations that regularly provide goods or services first and allow customers to pay later. . . . Examples of groups that may fall within this definition are utilities, health care providers, lawyers, accountants, and other professionals, and telecommunications companies.'' [39] The FTC had also stated in the preamble to the final Red Flags Rule that a ''broad scope of entities'' was covered.[40] Similar guidance was provided in policy statements issued in 2008 and early 2009.[41] This guidance led to a law suit brought by the American Bar Association against the FTC alleging that the application of the rules to attorneys exceeded FTC's authority. Similar complaints were brought by the American Medical Association and other professionals.

In December 2010, Congress enacted the Red Flag Program Clarification Act (Clarification Act), 15 U.S.C. 1681m(e)(4), which narrowed the scope of entities covered as ''creditors'' under the Red Flags Rule.[42] The Clarification Act retained the ECOA definition of ''creditor,'' but generally limited the application of the Red Flags Rule to those ECOA creditors that ''regularly and in the ordinary course of business'' engaged in at least one of the following three types of conduct:

1. Obtaining or using consumer reports, directly or indirectly, in connection with a credit transaction; [43]

2. Furnishing information to consumer reporting agencies in connection with a credit transaction; [44] or

3. Advancing funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person.[45]

The Clarification Act also expressly excluded creditors that advanced funds on behalf of a person for expenses incidental to a service provided by the creditor to that person.[46]

Finally, in addition to limiting the scope of coverage for ''creditors'' by creating these specified categories, the Clarification Act empowered the Agencies to determine through a future rulemaking whether to include any other type of creditor that offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft.[47]

When amending its Red Flag ''creditor'' definition in 2012, the FTC choose not to use its discretionary rulemaking to extend coverage of the Red Flags Rule to additional creditors and merely cited to the Clarification Act statutory definition.[48] The FDIC is now proposing a similar result, to amend the ''creditor'' definition in its Red Flags Rule to expressly cite to the Clarification Act statutory provision, 15 U.S.C. 1681m(e)(4).

The FDIC has conferred with staff from the other Federal banking agencies, who do not object to the issuance of this notice of proposed rulemaking to amend the Red Flags Rule to conform it to the Clarification Act. In May, 2014, both the OCC and the Federal Reserve Board issued final rules making the conforming change.[49] The SEC and CFTC have previously issued final rules under section 615 of FCRA that included a definition of ''creditor'' as set forth in the Clarification Act.[50]

The FDIC is also proposing a technical amendment to supplement A to the guidelines that accompanied the Red Flags Rule consistent with the proposal, discussed below, to vacate the FDIC Fair Credit Reporting regulations with rule writing authority transferred to the CFPB.[51] In supplement A, the Agencies provided a list of red flags to be considered by the entities covered by the rule. One of those red flags was ''[a] consumer reporting agency provides a notice of address discrepancy, as defined in § 334.82(b) of this part.'' [52] Since the FDIC is proposing to vacate its regulation at 12 CFR 334.82, the FDIC is proposing to change the citation in that red flag to the CFPB regulation: § 1022.82(b).

III. Proposed Removal of FDIC Fair Credit Regulations Transferred to the Consumer Financial Protection Bureau

In amending the FCRA, the FACT Act gave the FDIC, along with the other Federal banking regulators (and, in some cases, the FTC and the SEC), rule writing authority for a variety of Fair Credit Reporting regulations. Since 2004, those regulations have been promulgated on an inter-agency basis as follows:

- 2004: Disposal of Consumer Information, 12 CFR 334.83, implementing FACT Act section 216 (FCRA section 628 (15 U.S.C. 1681w));
- 2005: Medical Information, 12 CFR part 334, subpart D, implementing FACT Act section 411 (FCRA section 604(g)(5) (15 U.S.C. 1681b(g)(5));
- 2007: Affiliate Marketing, 12 CFR part 334, subpart C and appendix C, implementing FACT Act section 214 (FCRA section 624 note (15 U.S.C. 1681s–3 note));
- 2007: Identity Theft Red Flags, 12 CFR part 334, subpart J and appendix J, implementing FACT Act section 114 (FCRA section 615(e) (15 U.S.C. 1681m(e)); [53]
- 2007: Address Discrepancy, 12 CFR 334.82, implementing FACT Act section 315 (FCRA section 605(h) (15 U.S.C. 1681c(h)); and
- 2009: Duties of Furnishers of Information, 12 CFR part 334, subpart E and appendix E, implementing FACT Act section 312 (FCRA section 623(e) (15 U.S.C. 1681S–2(e)).

Title X of the Dodd-Frank Act amended a number of consumer financial protection laws, including provisions of the FCRA. In addition to substantive amendments, the Dodd-

[36] 12 CFR 334.90(b)(5).

[37] 12 CFR 334.90(a).

[38] This result would be the same if the new scope provision of the Red Flags Rule as proposed in this notice of proposed rulemaking—which would add ''a State savings association whose deposits are insured by the Federal Deposit Insurance Corporation''—is finalized.

[39] *See American Bar Ass'n* v. *Federal Trade Comm'n* (''*ABA* v. *FTC*''), 671 F. Supp. 2d 64, 70 (D.D.C. 2009) (quoting Red Flags Rule: Frequently Asked Questions, *http://www.ftc.gov/bcp/edu/microsites/redflagsrule/faqs.shtm* (since amended)), *vacated as moot,* 636 F.3d 641 (D.C. Cir. 2011).

[40] 72 FR at 63741.

[41] *See ABA* v. *FTC,* 671 F. Supp. 2d at 69–70.

[42] Pub. L. 111–319, 124 Stat. 3457 (2010).

[43] 15 U.S.C. 1681m(e)(4)(A)(i).

[44] 15 U.S.C. 1681m(e)(4)(A)(ii).

[45] 15 U.S.C. 1681m(e)(4)(A)(iii).

[46] 15 U.S.C. 1681m(e)(4)(B).

[47] 15 U.S.C. 1681m(e)(4)(C).

[48] *See* 77 FR 72712 (Dec. 6, 2012).

[49] *See* 79 FR 28393, 28400 (May 16, 2014) (OCC); 79 FR 30709, 30711 (May 29, 2014) (Federal Reserve Board).

[50] *See* 78 FR 23638 (Apr. 19, 2013) (SEC and CFTC joint final rules; the CFTC ''creditor'' definition cited the Clarification Act provision, but also specifically listed the covered entities).

[51] 12 CFR part 334, supplement A to appendix J.

[52] *Id.* at 3.

[53] As amended by the Clarification Act. *See* discussion above.

Frank Act transferred rulemaking authority from the FDIC, FRB, OCC, FTC, NCUA, and OTS for several provisions of the ''Fair Credit Reporting'' regulations to the CFPB, effective July 21, 2011.[54] These include the following regulations listed above: Medical information; affiliate marketing; address discrepancy; and duties of furnishers of information. Those regulations were covered under 12 CFR part 334 parts C, D, and E, as well as 12 CFR 334.82 in subpart I. The transfer also included the related Appendices, 12 CFR part 334, Appendices C and E. On December 21, 2011, the CFPB published in the **Federal Register** an interim final rule Regulation V, which implemented the Dodd-Frank Act amendments to the FCRA with regard to those regulations and appendices.

As discussed above, the Dodd-Frank Act did not transfer all rulemaking authority under the FCRA. Specifically, the Act did not transfer to the CFPB the authority to promulgate: Rules on the disposal of consumer information; [55] rules on identity theft red flags and corresponding interagency guidelines on identity theft detection, prevention, and mitigation; [56] and rules on the duties of card issuers regarding changes of address.[57] These existing provisions are not included in the Bureau's new Regulation V.[58]

As a result of the of rule writing authority transferred to the CFPB, the FDIC is proposing to rescind and remove those regulations and appendices covered under the CFPB's Regulation V. In addition to the specific citations set out above, the FDIC is also proposing rescinding and removing those parts of the Purpose and Definition provisions of the ''Fair Credit Reporting'' regulations that related to the substantive regulations transferred to the CFPB.[59]

Even though there is no longer rule writing authority for those ''Fair Credit Reporting'' rules, the FDIC will continue to examine for compliance with the rules and take enforcement action when warranted.

Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking. Written comments must be received by the FDIC no later than March 31, 2015.

IV. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3521, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

Part of the Proposed Rule would rescind and remove from FDIC regulations part 391, subpart C. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by title III of the Dodd-Frank Act. Part 391, subpart C is largely redundant of the FDIC's existing part 334 regarding ''Fair Credit Reporting'' regulations, including appendix J to the part. The FDIC reviewed its burden estimates for the collection at the time it assumed responsibility for supervision of State savings associations transferred from the OTS and determined that no changes to the burden estimates were necessary. This Proposed Rule will not modify the FDIC's existing collection and does not involve any new collections of information pursuant to the PRA.

The Proposed Rule would also amend sections 334.83, 334.90 and 334.91 to include State savings associations and their subsidiaries within the scope of part 334. The Proposed Rule would also amend those provisions to define ''State savings association.'' These measures clarify that State savings associations, as well as State nonmember banks are subject to part 334. Thus, these provisions of the Proposed Rule will not involve any new collections of information under the PRA or impact current burden estimates.

Part of the Proposed Rule would amend the ''creditor'' definition in the FDIC's Identity Theft Red Flag regulation in conformance with the Clarification Act. The vast majority of entities regulated by the FDIC under the Identity Theft Red Flag regulation fall under the ''financial institution'' definition, and, therefore, would be covered under the rule regardless of the change in the ''creditor'' definition. For any subsidiary of a covered financial institution not covered under the ''financial institution'' definition, the proposed change to the ''creditor'' definition would, arguably, cover fewer, rather than more, entities. Thus, this provision of the Proposed Rule will not involve any new collections of information under the PRA or substantively impact current burden estimates.

Finally, part of the Proposed Rule would rescind and remove those portions of 12 CFR part 334 where rule writing authority was transferred to the CFPB. This portion of the Proposed Rule will also not involve any new collections of information under the PRA or impact current burden estimates. Based on the foregoing, no information collection request has been submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $550 million).[60] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. For the reasons provided below, the FDIC certifies that the Proposed Rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

As discussed in this notice of proposed rulemaking, part 391, subpart C was transferred from OTS part 571, which governed Fair Credit Reporting. OTS part 571 had been in effect beginning in 2004, and all State savings associations were required to comply with it. Because it is redundant of existing part 334 of the FDIC's rules, the FDIC proposes rescinding and removing part 391, subpart C. As a result, all FDIC-supervised institutions—including State savings associations and their subsidiaries—would be required to comply with part 334. Because all State savings associations and their

[54] *See* sections 1061 and 1088 of the Dodd-Frank Act.

[55] *See* 15 U.S.C. 1681m(e); section 1088 of the Dodd-Frank Act.

[56] *See* 15 U.S.C. 1681w; section 1088 of the Dodd-Frank Act.

[57] *See* 15 U.S.C. 1681m(e); section 1088 of the Dodd-Frank Act.

[58] The Act also did not transfer rulemaking authority under the FCRA over any motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, subject to certain exceptions. *See* section 1029 of the Dodd-Frank Act.

[59] Those provisions include part of 12 CFR 334.1 and the definitions set out at 12 CFR 334.3(a), (b), (d), (i), and (k).

[60] 5 U.S.C. 601 *et seq.*

subsidiaries have been required to comply with substantially the same rules beginning in 2004, today's Proposed Rule would have no significant economic impact on any State savings association.

In a similar way, portions of part 334 of the FDIC's rules were transferred to the CFPB Regulation V effective 2011. Because all FDIC supervised institutions—including State savings associations and their subsidiaries—have been required to comply with part 334 beginning in 2004, today's Proposed Rule would have no significant economic impact on those institutions.[61]

With regard to the portion of the Proposed Rule amending the Red Flags Rule and appendix:

1. *Statement of the need for, and objectives of, the proposed rule.* As noted above, the Clarification Act amended the definition of ''creditor'' in the FCRA for purposes of the red flags provisions. The FDIC is proposing to amend the definition of ''creditor'' in its Red Flags Rule to reflect the revised definition of that term in the Clarification Act. As also noted above, the FDIC is proposing to update a cross-reference in the Red Flags Rule to reflect the CFPB's rulemaking authority for the notice of address discrepancy provisions in the FCRA.

2. *Small entities affected by the proposed rule.* The Proposed Rule would amend the definition of ''creditor'' in 12 CFR 334.90 to conform to the revised definition of that term in the Clarification Act. The proposed definition continues to refer to the FCRA definition of ''creditor,'' which references the ECOA definition of ''creditor,'' but limits the application of the red flags provisions to only those creditors that regularly and in the ordinary course of business: (a) Obtain or use consumer reports in connection with a credit transaction; (b) furnish information to consumer reporting agencies in connection with a credit transaction; or (c) advance funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person. 12 U.S.C. 1681m(e)(4)(A). Creditors that advance funds on behalf of a person for expenses incidental to a service provided by the creditor to that person are excluded from the definition. Small entity creditors that do not meet this more limited definition would no longer be covered by the rule. However, small entities that are financial institutions would still be covered by the rule, regardless of whether they meet the revised definition of creditor.

The Proposed Rule would also update a cross-reference in the Red Flags Rule to reflect the CFPB's rulemaking authority for the notice of address discrepancy provisions in the FCRA. This revision would have no effect on small entities because there was no substantive difference between the FDIC definition of a ''notice of address discrepancy'' and the CFPB's definition.

3. *Recordkeeping, reporting, and compliance requirements.* The Proposed Rule does not impose any new recordkeeping, reporting, or compliance requirements on small entities. Small entities that no longer meet the narrower definition of ''creditor'' would not have to comply with the requirements of the Red Flags Rule. However, small entity financial institutions would still be required to comply with the Red Flags Rule, regardless of whether they meet the revised definition of creditor.

4. *Other federal rules.* The FDIC has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revision.

5. *Significant alternatives to the proposed revisions.* The proposed revisions to the definition of ''creditor'' and the cross-reference to the definition of a ''notice of address discrepancy'' reflect statutory changes. The FDIC does not believe there are significant alternatives to these revisions. Although the FDIC has authority to determine through a rulemaking that any other creditor that offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft is subject to the Red Flags Rule, the FDIC does not believe it is appropriate to use its discretionary rulemaking authority at this time.

C. Plain Language

Section 722 of the GLB Act, codified at 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the Proposed Rule is clearly stated and effectively organized, and how the FDIC might make it easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[62] The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review. The action taken on this rule will be included as part of the EGRPRA review that is currently in progress. As part of that review, the FDIC invites comments concerning whether the Proposed Rule would impose any outdated or unnecessary regulatory requirements on insured depository institutions. If you provide such comments, please be specific and provide alternatives whenever appropriate.

List of Subjects

12 CFR part 334

Fair credit reporting.

12 CFR part 391

Fair credit reporting.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 334 and part 391 of title 12 of the Code of Federal Regulations as set forth below:

PART 334—FAIR CREDIT REPORTING

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

Authority: 12 U.S.C. 1818, 1819 (Tenth), and 1831p–1; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, 1681w, 6801 *et seq.,* Pub. L. 108–159, 117 Stat. 1952.

[61] When propounding its new Regulation V, the CFPB made the following representation in its Regulatory Flexibility Act discussion: [T]his rule has only a minor impact on entities subject to Regulation V. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule imposes no new, substantive obligations on covered entities and will require only minor, one-time adjustments to certain model form. . . . 76 FR at 79312.

[62] Public Law 104–208 (Sept. 30, 1996).

Subpart A—General Provisions

■ 2. Revise § 334.1 to read as follows:

§ 334.1 Purpose and scope.

(a) *Purpose* The purpose of this part is to implement the Fair Credit Reporting Act.

(b) *Scope* Except as otherwise provided in this part, the regulations in this part apply to insured state nonmember banks, state savings associations whose deposits are insured by the Federal Deposit Insurance Corporation, insured state licensed branches of foreign banks, and subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

■ 3. Amend § 334.3 by removing and reserving paragraphs (a), (b), (d), and (i) through (k), and adding paragraph (m) to read as follows:

§ 334.3 Definitions.

* * * * *

(m) *State savings association* has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

Subparts C through E [Reserved]

■ 4. Remove and reserve subparts C, D and E consisting of §§ 334.20 through 334.43.

Subpart I—Records Disposal

■ 5. Rename header for subpart I as shown above.

§ 334.82 [Removed and reserved]

■ 6. Remove and reserve § 334.82.

Subpart J—Identity Theft Red Flags

■ 7. Amend § 334.90 by revising paragraphs (a) and (b)(5) and adding paragraph (b)(11) to read as follows:

§ 334.90 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Scope.* This section applies to a financial institution or creditor that is an insured state nonmember bank, State savings association whose deposits are insured by the Federal Deposit Insurance Corporation, insured state licensed branch of a foreign bank, or a subsidiary of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(b) * * *

(5) *Creditor* has the same meaning as in 15 U.S.C. 1681m(e)(4).

* * * * *

(11) *State savings association* has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

* * * * *

■ 8. Amend § 334.91 by revising paragraph (a) and adding paragraph (b)(3) to read as follows:

§ 334.91 Duties of card issuers regarding change of address.

(a) *Scope* This section applies to an issuer of a debit or credit card (card issuer) that is an insured state nonmember bank, state savings association whose deposits are insured by the Federal Deposit Insurance Corporation, insured state licensed branch of a foreign bank, or a subsidiary of such entities (except brokers, dealers, persons providing insurance, investment companies, or investment advisers).

(b) * * *

(3) *State savings association* has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

■ 9. Amend supplement A to appendix J by revising example 3 to read as follows:

Appendix J to Part 334—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

* * * * *

3. A consumer reporting agency provides a notice of address discrepancy, as defined in 12 CFR 1022.82(b).

* * * * *

PART 391—FORMER OFFICE OF THRIFT SUPERVISION REGULATIONS

■ 10. The authority citation for part 391 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart A also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p-1; 1881–1884; 15 U.S.C. 1681w; 15 U.S.C. 6801; 6805.

Subpart B also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p-1; 1881–1884; 15 U.S.C.1681w; 15 U.S.C. 6801; 6805.

Subpart E also issued under 12 U.S.C. 1467a; 1468; 1817; 1831i.

Subpart C—[Removed and Reserved]

■ 11. Remove and reserve subpart C consisting of §§ 391.20 through 391.23 and appendix to subpart C of part 391.

Dated at Washington, DC, this 21st day of January, 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–01499 Filed 1–29–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR 360

RIN 3064–AE32

Notice of Proposed Rulemaking To Revise a Section Relating to the Treatment of Financial Assets Transferred in Connection With a Securitization or Participation

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The FDIC is proposing a rulemaking that would revise certain provisions of its securitization safe harbor rule, which relates to the treatment of financial assets transferred in connection with a securitization or participation, in order to clarify the requirements of the Securitization Safe Harbor as to the retention of an economic interest in the credit risk of securitized financial assets upon and following the effective date of the credit risk retention regulations adopted under Section 15G of the Securities Exchange Act.

DATES: Comments on the Proposed Rule must be received by March 31, 2015.

You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal_*. Follow instructions for submitting comments on the agency Web site.
- *Email: Comments@FDIC.gov.* Include RIN 3064–AE32 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments will be posted without change to *http://www.fdic.gov/regulations/laws/federal/_,* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: George H. Williamson, Manager, Division of Resolutions and

Receiverships, (571) 858–8199. Phillip E. Sloan, Counsel, Legal Division, (703) 562–6137.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Deposit Insurance Corporation (FDIC), in regulations codified at 12 CFR 360.6 (the Securitization Safe Harbor Rule), set forth criteria under which in its capacity as receiver or conservator of an insured depository institution the FDIC will not, in the exercise of its authority to repudiate contracts, recover or reclaim financial assets transferred in connection with securitization transactions. Asset transfers that, under the Securitization Safe Harbor Rule, are not subject to recovery or reclamation through the exercise of the FDIC's repudiation authority include those that pertain to certain grandfathered transactions, such as, for example, asset transfers made prior to December 31, 2010 which satisfied the conditions (except for the legal isolation condition addressed by the Securitization Safe Harbor Rule) for sale accounting treatment under generally accepted accounting principles (GAAP) in effect for reporting periods prior to November 15, 2009 and which pertain to a securitization transaction that satisfied certain other requirements. In addition, the Securitization Safe Harbor Rule provides that asset transfers that are not grandfathered, but that satisfy the conditions (except for the legal isolation condition addressed by the Securitization Safe Harbor Rule) for sale accounting treatment under GAAP in effect for reporting periods after November 15, 2009 and that pertain to a securitization transaction that satisfies all other conditions of the Securitization Safe Harbor Rule (such asset transfers, together with grandfathered asset transfers, are referred to collectively as Safe Harbor Transfers) will not be subject to FDIC recovery or reclamation actions through the exercise of the FDIC's repudiation authority. For any securitization transaction in respect of which transfers of financial assets do not qualify as Safe Harbor Transfers but which transaction satisfies all of its other requirements, the Securitization Safe Harbor Rule provides that, in the event the FDIC as receiver or conservator remains in monetary default for a specified period under a securitization due to its failure to pay or apply collections or repudiates the securitization asset transfer agreement and does not pay damages within a specified period, certain remedies can be exercised on an expedited basis.

Paragraph (b)(5)(i) of the Securitization Safe Harbor Rule sets forth the conditions relating to credit risk retention that apply to transfers of financial assets in connection with securitizations that are not grandfathered by the Securitization Safe Harbor Rule. Under paragraph (b)(5)(i)(A) of the Securitization Safe Harbor Rule, prior to the effective date of regulations required under Section 15G of the Securities Exchange Act, 15 U.S.C. 78a *et seq.* (''Section 15G''), the documents governing such securitization must require that the sponsor retain an economic interest in not less than five (5) percent of the credit risk of the financial assets relating to the securitization. The requirement in paragraph (b)(5)(i)(A) of the Securitization Safe Harbor Rule, that the documents require retention of an economic interest is consistent with many other provisions of the Securitization Safe Harbor Rule, which are similarly expressed as requirements for the securitization documentation, rather than as conditions requiring actual compliance with the provision that is required to be included in the documentation. Paragraph (b)(5)(i)(B) of the Securitization Safe Harbor Rule does not explicitly refer to the securitization documentation, but provides that, upon the effective date of the regulations required under Section 15G (the Section 15G Regulations), such regulations shall exclusively govern the requirement to retain an economic interest in the credit risk of the financial assets.

Section 15G provides that regulations issued thereunder become effective with respect to residential mortgage securitizations one year after the date on which the regulations are published in the **Federal Register** and, with respect to all other securitizations, two years after such publication date. The Section 15G Regulations were published in the **Federal Register** at 79 FR 77602 on December 24, 2014. The **Federal Register** publication of the Section 15G Regulations specifies ''compliance dates'' that correspond to these effective dates. However, the **Federal Register** publication also specifies February 23, 2015 as the ''effective date'' of the Section 15G Regulations in accordance with **Federal Register** editorial conventions, which require that a **Federal Register** publication specify as the effective date the date on which a rule affects the current Code of Federal Regulations.[1] The Proposed Rule is designed, in part, to eliminate any confusion that might be created by the use of ''effective date'' in this way and to clarify when compliance with paragraph (b)(5)(i)(B) of the Securitization Safe Harbor Rule is required.

In connection with the notice of proposed rulemaking relating to the Section 15G Regulations, FDIC staff received a comment that suggested that certain points relating to paragraph (b)(5)(i)(B) of the Securitization Safe Harbor Rule should be clarified, and in following up on the comment, the FDIC identified two points that are addressed in the Proposed Rule. The first is a clarification that paragraph (b)(5)(i)(B) was intended to require that, upon and following the effective date of the Section 15G Regulations, the Securitization Safe Harbor Rule requirements as to risk retention are satisfied if the governing documents of a securitization transaction require retention of an economic interest in the financial assets in accordance with the Section 15G Regulations, and that if the documentation satisfies this condition (and assuming all other conditions of the Securitization Safe Harbor Rule are satisfied), the transaction will not lose the benefits of the safe harbor solely on the basis of any non-compliance with the Section 15G Regulations risk retention requirements.

The second is a clarification that paragraph (b)(5)(i)(B) of the Securitization Safe Harbor Rule does not require that any action be taken with respect to issuances of asset-backed securities that close prior to the effective date of the Section 15G Regulations.

II. Discussion

In the FDIC's view it is important to make clear to securitization market participants the date upon and after which the Securitization Safe Harbor will require reference to the Section 15G Regulations. In addition, the FDIC wants to eliminate possible confusion among market participants as to whether an asset-backed security issuance that complies with all requirements of the Securitization Safe Harbor Rule could forfeit the benefits afforded by the Securitization Safe Harbor Rule based on the action or inaction of a securitization sponsor or other party with respect to retention of credit risk following the date of such issuance. The Proposed Rule would clarify that, if the documents require compliance with the Section 15G Regulations, the benefits of the Securitization Safe Harbor Rule are not forfeited based solely upon non-compliance with these requirements. This is different from the Section 15G Regulations, under which non-compliance with the credit risk

[1] See 79 FR 77602 (December 24, 2014).

retention requirements will constitute a violation of the Regulations.

Accordingly, the Proposed Rule would revise paragraphs (b)(5)(i)(A) and (b)(5)(i)(B) of the Securitization Safe Harbor Rule to make the following three points clear:

(i) In order to qualify for the benefits of the Securitization Safe Harbor Rule, the documents governing the issuance of asset-backed securities in a securitization transaction must require retention of an economic interest in the credit risk of the financial assets relating to the securitization transaction in compliance with the Section 15G Regulations if such issuance occurs upon or following the date on which compliance with Section 15G is required for such type of securitization transaction;

(ii) The Securitization Safe Harbor Rule does not require inquiry as to whether the sponsor or other applicable party in fact complies with the risk retention requirements of the documentation; and

(iii) The Securitization Safe Harbor Rule requirements as to the Section 15G Regulations do not require changes to securitization documents governing asset-backed security issuances that are closed prior to the date on which compliance with Section 15G is required for such type of issuances.

The FDIC is proposing the clarifications described in points (ii) and (iii) above in recognition of the fact that the benefits afforded by the Securitization Safe Harbor Rule were intended to provide certainty to investors as to certain matters relating to the course of conduct by the FDIC as receiver or conservator of an insured depository institution with respect to financial assets transferred by such insured depository institution. It would be inconsistent with this goal if the treatment under the Securitization Safe Harbor Rule by the FDIC as receiver or conservator of an institution that transferred financial assets in connection with the issuance of such securities could be dependent on post-closing actions with respect to credit risk retention that are beyond the control of investors.

III. Request for Comment

The FDIC invites comment from all members of the public on all aspects of the Proposed Rule. Comments are specifically requested on whether the Proposed Rule is consistent with the purposes of section 360.6 and whether the results intended to be achieved by the Proposed Rule will be and should be achieved as set forth in the Proposed Rule or by way of different modifications to the Securitization Safe Harbor Rule. The FDIC will carefully consider all comments that relate to the Proposed Rule.

IV. Administrative Law Matters

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) (''PRA'') the FDIC 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 (OMB) control number. The Proposed Rule would not revise the Securitization Safe Harbor Rule information collection 3064–0177 or create any new information collection pursuant to the PRA. Consequently, no submission will be made to the Office of Management and Budget for review. The FDIC requests comment on its conclusion that this NPR does not revise the Securitization Safe Harbor Rule information collection, 3064–0177.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis with a proposed rule, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605. The FDIC hereby certifies that the Proposed Rule would not have a significant economic impact on a substantial number of small entities, as that term applies to insured depository institutions.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Proposed Rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for Part 360 continues to read as follows:

Authority: 12 U.S.C. 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(d)(15)(D), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

■ 2. Revise § 360.6 paragraph (a) Defiinitions by adding the definition ''Applicable compliance date'' as (a)(1) and redesignating the remaining definitions in numerical order to read as follows:

§ 360.6 Treatment of financial assets transferred in connection with a securitization or participation.

(a) * * *

(1) *Applicable compliance date* means, with respect to a securitization, the date on which compliance with Section 15G of the Securities Exchange Act, 15 U.S.C. 78a *et seq.,* added by Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is required with respect to that securitization.

* * * * *

■ 3. Revise § 360.6 paragraph (b)(5)(i) to read as follows:

(i) *Requirements applicable to all securitizations.*

(A) Prior to the applicable compliance date for regulations required under Section 15G of the Securities Exchange Act, 15 U.S.C. 78a *et seq.,* added by Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the documents creating the securitization shall require that the sponsor retain an economic interest in a material portion, defined as not less than five (5) percent, of the credit risk of the financial assets. This retained interest may be either in the form of an interest of not less than five (5) percent in each of the credit tranches sold or transferred to the investors or in a representative sample of the securitized financial assets equal to not less than five (5) percent of the principal amount of the financial assets at transfer. This retained interest may not be sold, pledged or hedged, except for the hedging of interest rate or currency risk, during the term of the securitization.

(B) For any securitization that closes upon or following the applicable compliance date for regulations required under Section 15G of the Securities Exchange Act, 15 U.S.C. 78a *et seq.,* added by Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the documents creating the securitization shall instead require retention of an economic interest in the credit risk of the financial assets in accordance with such regulations, including the restrictions on sale, pledging and hedging set forth therein.

* * * * *

Dated at Washington, DC, this 21st day of January, 2015.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 2015–01444 Filed 1–29–15; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2011–0024; 4500030113]

RIN 1018–AY98

Endangered and Threatened Wildlife and Plants; Listing the Northern Long-Eared Bat With a Rule Under Section 4(d) of the Act; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), published a proposed rule in the **Federal Register** on January 16, 2015, to set forth a species-specific rule under the authority of section 4(d) of the Endangered Species Act of 1973, as amended (Act), that provides measures that are necessary and advisable to provide for the conservation of the northern long-eared bat (*Myotis septentrionalis*), should we determine this species warrants listing as a threatened species under the Act. In that proposal, we provided the wrong address for the submission of hard-copy comments. With this document, we correct our error.

DATES: We will accept comments on the January 16, 2015, proposed rule that are received or postmarked on or before March 17, 2015.

ADDRESSES: You may submit comments on the January 16, 2015, proposed rule by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R5–ES–2011–0024, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2011–0024; Division of Policy and Directives Management; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by one of the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (for more information, see the Public Comments section of the January 16, 2015, proposed rule at 80 FR 2371).

FOR FURTHER INFORMATION CONTACT: Tony Sullins, Endangered Species Chief, Midwest Regional Office, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437; telephone 612–725–3548; or facsimile 612–725–3548. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: In a proposed rule that published in the **Federal Register** on January 16, 2015, at 80 FR 2371, the **ADDRESSES** section provided the wrong address for the submission of hard-copy comments. The corrected **ADDRESSES** section appears above.

Dated: January 27, 2015.

Tina A. Campbell,
Chief, Division of Policy and Directives Management.
[FR Doc. 2015–01804 Filed 1–29–15; 8:45 am]
BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 80, No. 20
Friday, January 30, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Sequoia National Forest, California; Tobias Forest Ecosystem Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposes ecological restoration in the Tobias Forest Ecosystem Restoration Project (Tobias Project) by encouraging a healthy and diverse forest ecosystem that is resilient to the effects of wildfire, drought, disease, and other disturbances. The Tobias Project is located in the Greenhorn Mountains on the Western Divide Ranger District, between Alta Sierra and Johnsondale in Tulare County, California. This project would commercially thin stands of mature trees, smaller than 30 inches in diameter at breast height (dbh), to increase heterogeneity and resilience on 1,290 acres. Hand thinning or mastication of immature trees and prescribed burning are proposed on 4,130. To restore the historic species composition, areas selected for thinning would favor Jeffrey and sugar pines, oak, and other shade intolerant species.

DATES: Comments concerning the scope of the analysis must be received by March 2, 2015. The draft environmental impact statement is expected March 2015 and the final environmental impact statement is expected August 2015.

ADDRESSES: Send written comments to George Powell, Acting District Ranger, Western Divide Ranger District, 32588 Hwy. 190, Springville, CA 93265. Comments may also be sent via email to *comments-pacificsouthwest-seguoia@fs.fed.us,* or via facsimile to (559) 539–2067.

FOR FURTHER INFORMATION CONTACT: O'Dell Tucker, Planner, Western Divide Ranger District, 32588 Hwy. 190, Springville, CA 93265.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Rely Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2014, a Notice of Intent to prepare an environmental impact statement for the Tobias Forest Ecosystem Restoration Project was published in the **Federal Register**, Vol. 79, No. 133, on pages 47082 to 47083. The Forest Service after reviewing comments and initial analysis of the proposed action and additional alternatives has decided to amend the proposed action and issue a new Notice of Intent to prepare an Environmental Impact Statement (EIS), for the Tobias Forest Ecosystem Restoration Project. This Notice of Intent gives the public an opportunity to review and comment on changes made to the proposed action. The publication of this Notice of Intent begins another scoping period for the environmental impact statement for the Tobias Project.

Purpose and Need for Action

The changes to the initial proposed action would help the Tobias project better meet the purpose and need for the project. The purpose of the project is to restore and maintain the forests throughout the project area to promote a healthy, diverse forest ecosystem that is resilient to the effects of wildfire, drought, disease, and other disturbances. There is a need to increase diversity in age, density, and stand structure; modify tree species composition to favor oaks and pines (Jeffrey and sugar) over incense-cedar and white fir; modify fuel conditions to reduce the risk of uncharacteristically large, stand-replacing fires; improve wildlife habitat structure for resting, roosting, denning, and nesting purposes for forest-dependent wildlife species; support local economies with sustainable and cost-effective use of any byproducts of project implementation; improve watershed conditions by decommissioning some roads when the project concludes, in addition to routine maintenance of existing roads.

Proposed Action

The proposed action would use ground skidding and skyline yarding to commercially thin in stands of mature trees smaller than 30 inches in diameter at breast height (dbh) to increase heterogeneity and resilience on 1,290 acres. Hand thinning of immature trees less than 10 inches dbh is proposed for 1,280 acres. Mastication is proposed on 2,400 acres of small, immature trees. The proposed mastication treatments would be implemented on slopes up to 35 percent. Prescibed fire would be introduced on the landscape after thinning and mastication are completed to reduce surface fuels and promote natural regeneration of species indigenous to the project area. Underburning is proposed for 450 acres in the home range core areas (HRCA) for the California spotted owl. Large snags and large woody debris would be protected. Riparian areas and meadows would be protected and improved. Approximately eight (8) miles of road decommissioning is proposed to improve the watershed condition, stream habitat, and water quality. The proposal also includes 450 acres of fuelbreak treatment along ridgelines.

Possible Alternatives

In addition to the proposed action, the EIS will evaluate the required No Action Alternative, an alternative that uses non-commercial treatments, and an alternative that is consistent with the interim guidelines for California spotted owl (CSO) or subsequent CSO Conservation Strategy.

Responsible Official

The responsible official is Kevin B. Elliott, Forest Supervisor, Sequoia National Forest, 1839 South Newcomb Street, Porterville, CA 93257.

Nature of Decision To Be Made

The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action with respect to the Tobias Forest Ecosystem Restoration project.

Scoping Process

The Forest Service has decided to analyze this project under an EIS; therefore any scoping has to be published in the **Federal Register** as a Notice of Intent (NOI). This NOI will

initiate another 30-day scoping process, which guides the development of the EIS. It is important that reviewers provide their comments at such times and in such a manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. If reviewers commented during one or both of the previous scoping and NOI periods, and your comments are the same, you do not need to comment again; your previous comments will be considered during the preparation of the environmental impact statement and you will be eligible to file an objection under the 36 CFR part 218 regulations.

Specific written comments are defined as comments ''. . . within the scope of the proposed action, have a direct relationship to the proposed action, and must include supporting reasons for the responsible official to consider.'' (36 CFR 218.2). Submission of timely, specific written comments is a prerequisite for eligibility to file an objection under the 36 CFR part 218 regulations.

Comment Requested

This project will follow the new objection procedures as directed by 36 CFR part 218. The objection process provides an opportunity for members of the public who have participated in opportunities for public participation provided throughout the planning process to have any unresolved concerns receive an independent review by the Forest Service prior to a final decision being made by the responsible official. Only those who provided specific written comments during opportunities for public comment are eligible to file an objection.

Comments received in response to this solicitation, including the names and addresses of those who comment, are part of the public record on this proposed action. Comments submitted anonymously will be accepted and considered, however anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: January 26, 2015.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 2015–01775 Filed 1–29–15; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Wholesale Trade Survey.

OMB Control Number: 0607–0195.

Form Number(s): SA–42, SA–42A, SA–42(MSBO), SA–42A(MSBO), SA–42(AGBR), SA–42A(AGBR).

Type of Request: Reinstatement, with change, of an expired collection.

Number of Respondents: 7,210.

Average Hours per Response: 30 minutes.

Burden Hours: 3,663.

Needs and Uses: The Annual Wholesale Trade Survey (AWTS) covers employer firms with establishments located in the United States and classified in wholesale trade as defined by the North American Industry Classification System (NAICS). This sector comprises two main types of wholesalers: (1) Merchant wholesalers that sell goods on their own account (including sales offices and sales branches, except retail stores, maintained by manufacturing, refining, or mining enterprises apart from their plants or mines for the purpose of marketing their products) and (2) electronic markets, agents, and brokers that arrange sales for purchases for others generally for a commission or fees.

Respondents are separated into three classifications: (1) Merchant wholesale establishments, excluding manufacturers' sales branches and offices; (2) manufacturers' sales branches and offices; and (3) agents, brokers, and business-to-business electronic markets. The survey requests firms to provide annual sales, annual e-commerce sales, year-end inventories held inside or outside of the United States, method of inventory valuation, total operating expenses, purchases, and, for selected industries, commissions, and sales on their own account. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies, as well as to serve as a benchmark for the estimates compiled from the Monthly Wholesale Trade Survey [OMB No. 0607–0190]. Results will be available, at the United States summary level, for selected wholesale trade, and/or manufacturer's sales branches and offices and agents, brokers, representatives and electronic markets, industries approximately fifteen months after the end of the reference year.

Every 5 years, AWTS requests data on detailed operating expenses. During the next three years, detailed operating expenses will not be collected. The last time AWTS collected detailed operating expenses was in 2013 for the 2012 survey year. The plan is to reinstate these questions in 2018 as part of the 2017 AWTS data collection. Estimates are published based on NAICS, which has been widely adopted throughout both the public and private sectors.

The Bureau of Economic Analysis (BEA) uses the data to estimate the change in private inventories component of gross domestic product (GDP) and output in both the benchmark and annual input-output (I–O) accounts and GDP by industry. Data on sales taxes, which are collected on this survey quinquennially, are also used to prepare estimates of GDP by industry and to derive industry output for the I–O accounts. Data on detailed operating expenses, which will now be collected on this survey quinquennially, are used to produce national estimates of value added, gross output, and intermediate inputs and serve as a benchmark for the annual industry accounts, which provide the control totals for the GDP-by-state accounts.

The Bureau of Labor Statistics uses the data as input to its Producer Price Indexes and in developing productivity measurements. Private businesses use the estimates in computing business activity indexes.

Other government agencies and businesses use the data to satisfy a variety of public and business needs such as economic market analysis, company performance, and forecasting future demands.

In an effort to migrate our economic program toward online reporting and reduce paper usage, the AWTS encourages respondents to use the option of returning their data via the Census Bureau's online reporting system (Centurion). The Centurion system is designed to be secure and flexible for users. It allows respondents to complete and file in one session or to save and return over multiple sessions.

For the first time during the 2013 processing year, our initial mailing contained a letter and flyer that provided instructions on how to report data and receive help online, and did not include a paper questionnaire.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 182, 224, and 225.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: January 27, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–01820 Filed 1–29–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel.

OMB Control Number: 0608–0072.

Form Number: BE–150.

Type of Request: Regular submission.

Number of Responses: 24 annually (6 filed each quarter).

Average Hours per Response: 16 hours is the average, but may vary considerably among respondents because of differences in company size and complexity.

Estimated Total Annual Burden Hours: 384.

Needs and Uses: The Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel (BE–150) is a survey that collects data on the credit, debit, charge, automated teller machine (ATM), and point of sale transactions of U.S. persons traveling abroad and foreign persons traveling in the United States. The information collected on this survey will be used to formulate U.S. international economic policy and analyze the impact of that policy, and the policies of foreign countries, on international trade in services. The data are also used in estimating the travel component of the U.S. international transactions accounts (ITAs) and national income and product accounts (NIPAs).

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: January 27, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–01772 Filed 1–29–15; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–009]

Calcium Hypochlorite From the People's Republic of China: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC''), the Department is issuing a countervailing duty order on calcium hypochlorite from the People's Republic of China (''PRC'').

DATES: *Effective Date:* January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7906.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (''the Act''), on December 15, 2014, the Department published its final determination that countervailable subsidies are being provided to producers and exporters of calcium hypochlorite from the PRC.[1] On January 21, 2015, the ITC notified the Department of its final determination pursuant to section 705(d) of the Act that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of subject merchandise from the PRC.[2]

Scope of the Order

The product covered by this order is calcium hypochlorite, regardless of form (*e.g.,* powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10 percent available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation $Ca(OCl)_2$, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, $Ca(OCl)_2.CaCl_2.Ca(OH)_2.2H_2O$ or hemibasic calcium hypochlorite with the chemical formula of $2Ca(OCl)_2.Ca(OH)_2$ or $Ca(OCl)_2.0.5Ca(OH)_2$. Calcium hypochlorite has a Chemical Abstract Service (''CAS'') registry number of 7778–54–3, and a U.S. Environmental Protection Agency (''EPA'') Pesticide Code (''PC'') Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods (''IMDG'') code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Countervailing Duty Order

In accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC has notified the Department of its

[1] *See Calcium Hypochlorite from the People's Republic of China: Final Affirmative Countervailing Duty Determination;* 79 FR 74064 (December 15, 2014) (''*Final Determination*'').

[2] *See Calcium Hypochlorite from China,* USITC Investigation Nos. 701–TA–510 and 731–TA–1245 (Final), USITC Publication 4515 (January 2015).

final determination that the industry in the United States producing calcium hypochlorite is materially injured by reason of subsidized imports of calcium hypochlorite from the PRC. Therefore, in accordance with section 705(c)(2) and 706(a) of the Act, we are publishing this countervailing duty order.

Pursuant to section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of calcium hypochlorite entered, or withdrawn from warehouse, for consumption on or after May 27, 2014, the date on which the Department published its affirmative preliminary countervailing duty determination in the **Federal Register**,[3] and before September 24, 2014, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of calcium hypochlorite made on or after September 24, 2014, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties, due to the Department's discontinuation, effective September 24, 2014, of the suspension of liquidation.

Suspension of Liquidation

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute suspension of liquidation, effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. The Department will also direct CBP to require a cash deposit for each entry of subject merchandise in an amount equal to the net countervailable subsidy rates listed below. The all-others rate applies to all producers and exporters of subject merchandise not specifically listed.

Producer/exporter	Net subsidy *ad valorem* rate (percent)
Hubei Dinglong Chemical Co., Ltd.	65.85
W&W Marketing Corporation	65.85
Tianjin Jinbin International Trade Co., Ltd.	65.85
All Others	65.85

This notice constitutes the countervailing duty order with respect to calcium hypochlorite from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: January 26, 2015.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

[FR Doc. 2015–01795 Filed 1–29–15; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Calcium Hypochlorite from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 79 FR 30082 (May 27, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–920, C–570–921, A–428–840]

Lightweight Thermal Paper From the People's Republic of China and Germany: Continuation of the Antidumping and Countervailing Duty Orders on the People's Republic of China, Revocation of the Antidumping Duty Order on Germany

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) in their five year (sunset) reviews that revocation of the antidumping duty (AD) order and the countervailing duty (CVD) order on lightweight thermal paper (LWTP) from the People's Republic of China (PRC) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the AD and CVD orders on LWTP from the PRC. In addition, as a result of the ITC's determination that revocation of the AD order on LWTP from Germany is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department is revoking the AD order on LWTP from the Germany.

DATES: *Effective Date:* AD Germany Revocation: November 24, 2013; AD and CVD PRC Continuation: January 30, 2015.

FOR FURTHER INFORMATION CONTACT: David Goldberger, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 2008, the Department published the AD orders on LWTP from the PRC and Germany and the CVD order on LWTP from the PRC.[1] On October 1, 2013, the Department initiated [2] and the ITC instituted [3] five-

[1] *See Antidumping Duty Orders: Lightweight Thermal Paper From Germany and the People's Republic of China,* 73 FR 70959 (November 24, 2008) and *Lightweight Thermal Paper From the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order.*

[2] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 60253 (October 1, 2013).

[3] *See Certain Lightweight Thermal Paper From China and Germany; Institution of Five-Year Reviews,* 78 FR 60313 (October 1, 2013).

year (''sunset'') reviews of the AD orders on LWTP from the PRC and Germany, and the CVD order on LWTP from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, the Department determined that revocation of the AD orders on LWTP from the PRC and Germany would likely lead to a continuation or recurrence of dumping, and that revocation of the CVD order on LWTP from the PRC would likely lead to continuation or recurrence of net countervailable subsidies, and notified the ITC of the magnitude of the margins of dumping and the subsidy rates likely to prevail were the orders revoked.[4]

On January 22, 2015, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the AD and CVD orders on LWTP from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, but that revocation of the AD order on LWTP from Germany would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time.[5]

Scope of the Orders

The merchandise covered by the orders is lightweight thermal paper. The scope of the orders includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m^2) (with a tolerance of $\pm$ 4.0 g/m^2) or less; irrespective of dimensions;[6] with or without a base coat[7] on one or both sides; with thermal active coating(s)[8] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;[9] and without an adhesive backing. Certain LWTP is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to the orders may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3703.10.60, 4811.59.20, 4811.90.8000, 4811.90.8030, 4811.90.8040, 4811.90.8050, 4811.90.9000, 4811.90.9030, 4811.90.9035, 4811.90.9050, 4811.90.9080, 4811.90.9090, 4820.10.20, and 4823.40.00.[10] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Continuation of the AD and CVD Orders on LWTP From the PRC

As a result of the determinations by the Department and the ITC that revocation of the AD and CVD orders on LWTP from the PRC would likely lead to a continuation or recurrence of dumping or net countervailable subsidies, and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD and CVD orders on LWTP from the PRC. U.S. Customs and Border Protection (CBP) will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Revocation of the AD Order on LWTP From Germany

As a result of the determination by the ITC that revocation of the AD order on LWTP from Germany would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department is revoking the AD order on LWTP from Germany. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is November 24, 2013 (*i.e.,* the fifth anniversary of the date of publication in the **Federal Register** of this order).[11]

Cash Deposits and Assessment of Duties for LWTP From Germany

The Department will notify CBP, 15 days after publication of this notice, to terminate the suspension of liquidation and to discontinue the collection of cash deposits on entries of the subject merchandise from Germany, entered or withdrawn from warehouse, on or after November 24, 2013. The Department will further instruct CBP to refund with interest all cash deposits on entries made on or after November 24, 2013. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and AD deposit requirements and assessments. The Department will complete any pending or requested administrative reviews of this order covering entries prior to November 24, 2013.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

These five-year (sunset) reviews and notice are in accordance with sections 751(c) and (d)(2), and 777(i) the Act, and 19 CFR 351.218(f)(4).

Dated: January 26, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–01794 Filed 1–29–15; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Lightweight Thermal Paper From the People's Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order,* 79 FR 9879 (February 21, 2014); *Lightweight Thermal Paper From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 79 FR 10477 (February 25, 2014); and *Lightweight Thermal Paper From Germany: Final Results of the First Full Sunset Review of the Antidumping Duty Order,* 79 FR 32218 (June 4, 2014).

[5] *See Lightweight Thermal Paper From China And Germany; Determination,* 80 FR 3252 (January 22, 2015).

[6] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of the order.

[7] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[8] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[9] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

[10] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for ''other'' including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for ''other,'' including LWTP).

[11] *See Antidumping Duty Orders: Lightweight Thermal Paper From Germany and the People's Republic of China,* 73 FR 70959 (November 24, 2008).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–008]

Calcium Hypochlorite From the People's Republic of China: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on calcium hypochlorite from the People's Republic of China (''PRC'').

DATES: *Effective Date:* January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7906.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2014, the Department published the final determination of sales at less than fair value in the antidumping duty investigation of calcium hypochlorite from the PRC.[1] On January 21, 2015, the ITC notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (''the Act''), that an industry in the United States is materially injured by reason of imports of calcium hypochlorite from the PRC.[2]

Scope of the Order

The product covered by this investigation is calcium hypochlorite, regardless of form (*e.g.,* powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10 percent available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation $Ca(OCl)_2$, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, $Ca(OCl)_2.CaCl_2.Ca(OH)_2.2H_2O$ or hemibasic calcium hypochlorite with the chemical formula of $2Ca(OCl)_2.Ca(OH)_2$ or $Ca(OCl)_2.0.5Ca(OH)_2$. Calcium hypochlorite has a Chemical Abstract Service (''CAS'') registry number of 7778–54–3, and a U.S. Environmental Protection Agency (''EPA) Pesticide Code (''PC'') Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods (''IMDG'') code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC has notified the Department of its final determination in this investigation, in which it found that imports of calcium hypochlorite from the PRC are materially injuring a U.S. industry. Therefore, in accordance with section 735(c)(2) of the Act, we are publishing this antidumping duty order.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of calcium hypochlorite from the PRC. These antidumping duties will be assessed on unliquidated entries from the PRC entered, or withdrawn from warehouse, for consumption on or after July 25, 2014, the date on which the Department published the *Preliminary Determination,*[3] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart below, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through.[4] These instructions suspending liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins, adjusted where appropriate for export subsidies and estimated domestic subsidy pass-through, as discussed above.[5] The ''PRC-wide'' rate applies to all exporters of subject merchandise not specifically listed.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of the exporters that account for a significant proportion of exports of calcium hypochlorite from the PRC, we extended the four-month

[1] *See Calcium Hypochlorite From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 79 FR 74065 (December 15, 2013) (''*Final Determination''*) and accompanying Issues and Decision Memorandum.

[2] *See Calcium Hypochlorite from China,* USITC Investigation Nos. 701–TA–510 and 731–TA–1245 (Final), USITC Publication 4515 (January 2015).

[3] *See Calcium Hypochlorite From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 79 FR 43393 (July 25, 2014) (''*Preliminary Determination''*).

[4] *See* sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[5] *See* sections 736(a)(3), 772(c)(1)(C) and 777A(f) of the Act.

period to no more than six months.[6] In the underlying investigation, the Department published the *Preliminary Determination* on July 25, 2014. Therefore, the six-month period beginning on the date of the publication of the *Preliminary Determination* ended on January 21, 2015. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of calcium hypochlorite from the PRC entered, or withdrawn from warehouse, for consumption after January 21, 2015, the date the provisional measures expired, and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**.

Estimated Weighted-Average Dumping Margin

The weighted-average antidumping duty margin percentage is as follows:

Exporter	Weighted-average margin (percent)
PRC-Wide Entity	210.52 [7]

This notice constitutes the antidumping duty order with respect to calcium hypochlorite from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7043 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with sections 736(a) of the Act and 19 CFR 351.211(b).

[6] *See Preliminary Determination,* 79 FR 43393, 43394 (July 25, 2014).

[7] The following subsidy programs in the final determination of the concurrent countervailing duty investigation are export subsidies: Discounted Loans for Export-Oriented Enterprises (1.06 percent), Export Credits from China's Export-Import Bank (1.06 percent), Export Credit Insurance from China Export and Credit Insurance Corporation (Sinosure) (1.06 percent), Foreign Trade Development Fund (0.55 percent), Famous Brands Program (0.55 percent), Provision of Shipping for LTAR (5.34 percent). Therefore, we have offset the PRC-wide rate of 210.52 percent by the countervailing duty rate attributable to export subsidies (*i.e.,* 9.62 percent). *See Calcium Hypochlorite From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 79 FR 74064 (December 15, 2014) and accompanying Issues and Decision Memorandum at 7.

Date: January 26, 2015.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

[FR Doc. 2015–01798 Filed 1–29–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–941]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is rescinding the administrative review of the antidumping duty order on kitchen appliance shelving and racks (''kitchen racks'') from the People's Republic of China (''PRC'') for the period September 1, 2013 through August 31, 2014.

DATES: *Effective Date:* January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7906.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2014, based on a timely request for review by SSW Holding Company, Inc. and Nashville Wire Products, Inc. (collectively, ''Petitioners''),[1] the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on kitchen racks from the PRC covering the period September 1, 2013 through August 31, 2014.[2] The review covers nine companies.[3] On January 14, 2015, Petitioners withdrew their request for an administrative review on all of the nine companies listed in the *Initiation Notice*.[4] No other party requested a review of these companies or any other exporters of subject merchandise.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, Petitioners timely withdrew their request by the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding, in its entirety, the administrative review of kitchen racks from the PRC for the period September 1, 2013 through August 31, 2014.[5]

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**, if appropriate.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to

[1] *See* Letter from Petitioners, Re: Request for a 2013/2014 (Fifth) Administrative Review of the Antidumping Duty Order on Kitchen Appliance Shelving and Racks from the People's Republic of China, dated September 30, 2014.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 64565, 64567 (October 30, 2014) (''*Initiation Notice*'').

[3] *See id.*

[4] *See* Letter from Petitioners, Re: Petitioners' Withdrawal of Request for Administrative Review, dated January 14, 2015.

[5] On November 12, 2014, Petitioners filed a request for the Department to refer to U.S. Customs and Border Protection (''CBP'') information placed on the record concerning enforcement of the order. *See* Letter from Petitioners, Re: Comments on Customs and Border Protection Information, dated November 12, 2014. The Department intends to refer the information contained in this submission to CBP.

administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 23, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–01812 Filed 1–29–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Minoo Hatten AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2014, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC) for the period of review (POR) August 1, 2013, through July 31, 2014.[1] On August 29, 2014, the petitioners, the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation, requested an administrative review of the order with respect to Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa).[2] On September 30, 2014, in accordance with section 751(a) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on PRCBs from the PRC with respect to Nozawa.[3] On December 16, 2014, the petitioners timely withdrew their request for an administrative review of Nozawa.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' The petitioners withdrew their request for review within the 90-day time limit. Because we received no other requests for review of Nozawa and no other requests for the review of the order on PRCBs from the PRC with respect to other companies subject to the order, we are rescinding the administrative review of the order in full in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of PRCBs from the PRC during the POR at rates equal to the cash deposit or bonding rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: January 23, 2015.

Christian Marsh

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–01813 Filed 1–29–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC''). The period of review (''POR'') is May 1, 2013, through April 30, 2014. This review covers one PRC company, Tianjin Magnesium International, Co., Ltd. (''TMI'') and Tianjin Magnesium Metal Co., Ltd. (''TMM'') (collectively ''TMI/TMM'').[1]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 79 FR 44740 (August 1, 2014).

[2] *See* Letter from the petitioners to the Department, ''Polyethylene Retail Carrier Bags From the People's Republic of China: Request for Administrative Review'' (August 29, 2014).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 58729 (September 30, 2014).

[4] *See* Letter from the petitioners to the Department, ''Polyethylene Retail Carrier Bags From the People's Republic of China: Withdrawal of Request for Administrative Review'' (December 16, 2014).

[1] The Department initiated the instant review on both TMM and TMI. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 36462 (June 27, 2014) (''*Initiation Notice*''). In the 2011–2012 review of the order, the Department

Continued

The Department preliminarily finds that TMI/TMM did not have reviewable entries during the POR. The Department invites interested parties to comment on these preliminary results.

DATES: *Effective Date:* January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5848.

Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off-specification pure'' magnesium).

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Background

On May 1, 2014, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on pure magnesium from the PRC for the period May 1, 2013 through April 30, 2014.[2] On June 2, 2014, U.S. Magnesium LLC (''U.S. Magnesium''), a domestic producer and Petitioner in the underlying investigation of this case, made a timely request that the Department conduct an administrative review of TMI and TMM.[3] On June 27, 2014, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review.[4] On July 22 and 23, 2014, TMM and TMI separately submitted letters to the Department certifying that they did not export pure magnesium for consumption in the United States during the POR.[5]

On December 17, 2014, the Department placed on the record information obtained in response to a query to U.S. Customs and Border Protection (''CBP'') concerning imports into the United States of subject merchandise during the POR.[6] This information indicates that there were no entries of subject merchandise during the POR exported by TMI or TMM. In addition, on November 4, 2014, the Department notified CBP that it was in receipt of a no-shipment certification from TMI and TMM and requested CBP to report any contrary information within 10 days.[7] CBP did not report any contrary information.

Preliminary Determination of No Shipments

As noted in the ''Background'' section above, TMI and TMM each submitted timely-filed certifications indicating that it had no shipments of subject merchandise to the United States during the POR. The Department's review of CBP data supports this certification,[8] CBP did not provide any evidence that contradicts TMI or TMM's claim of no shipments,[9] and no interested party provided comment concerning the results of the CBP query.

Therefore, based on TMI and TMM's certification and analysis information of the record, the Department preliminarily determines that TMI/TMM did not have any reviewable entries during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in non-market economy (''NME'') cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to TMI/TMM and to issue appropriate instructions to CBP based on the final results of the review.[10]

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determined TMM and TMI to be collapsed and treated as a single company for purposes of the proceeding. *See Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 94 (January 2, 2014) and accompanying Issues and Decision Memorandum at Comment 5. As this collapsing determination remains unchallenged in this review, the instant preliminary results of this review cover the single TMM/TMI company. This is consistent with the Department's treatment of the single TMM/TMI company under identical circumstance in the prior 2012–2013 no shipments review (*see Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 29416 (May 22, 2014)).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 79 FR 24670, 24671 (May 1, 2014).

[3] *See* letter from U.S. Magnesium, ''Pure Magnesium from the People's Republic of China: Request for Administrative Review,'' dated June 2, 2014.

[4] *See Initiation Notice.*

[5] *See* letter from TMM, ''Pure Magnesium from the People's Republic of China; A–570–832; Certification of No Sales by Tianjin Magnesium Metal, Co., Ltd.,'' dated July 23, 2014; *see also* letter from TMI, ''Pure Magnesium from the People's Republic of China; A–570–832; Certification of No Sales by Tianjin Magnesium International, Co., Ltd.,'' dated July 22, 2014.

[6] *See* Memorandum to the File, ''2013–2014 Administrative Review of Pure Magnesium from the People's Republic of China: U.S. Customs and Border Protection Data,'' dated December 17, 2014 (''CBP Data Query'').

[7] *See* Memo to the File entitled, ''Transmit No Shipment Inquiry to the File,'' dated December 16, 2014, containing Customs Message # 4308302 (''CBP No Shipment Inquiry'').

[8] *See* CBP Data Query.

[9] *See* CBP No Shipment Inquiry.

[10] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) and the ''Assessment Rates'' section, below.

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days after the due date for case briefs, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the argument not to exceed five pages, and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'').[11] ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[12] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

[11] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov*. The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

[12] *See* 19 CFR 351.310(c).

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Additionally, pursuant to a recently announced refinement to its assessment practice in NME cases, if the Department continues to determine that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For TMI/TMM, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI/TMM in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 141.49 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[13] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: January 22, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–01814 Filed 1–29–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–019]

Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that countervailable subsidies are being provided to producers and exporters of boltless steel shelving units prepackaged for sale (''boltless steel shelves'') from the People's Republic of China (the ''PRC''). We invite interested parties to comment on this preliminary determination.

DATES: *Effective Date:* January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit or Paul Walker, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202.482.4031 or 202.482.0413, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The scope of the investigation covers boltless steel shelving units prepackaged for sale, with or without decks. The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits

that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by this investigation may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term ''deck'' refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor; [1]
- wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- bulk-packed parts or components of boltless steel shelving units; and
- made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States (''HTSUS'') statistical subheadings 9403.20.0018 and 9403.20.0020, but may also enter through HTSUS 9403.10.0040. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

Methodology

The Department is conducting this countervailing duty (''CVD'') investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the ''Act''). For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memo.[2] The Preliminary Decision Memo is a public document and is on file electronically *via* Enforcement & Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'').[3] ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memo can be accessed directly on the Internet at *http://trade.gov/enforcement/frn/index.html.* The signed Preliminary Decision Memo and the electronic versions of the Preliminary Decision Memo are identical in content.

The Department notes that, in making these findings, we relied, in part, on facts available and, because one or more respondents did not act to the best of their ability to respond to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[4] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memo.

Alignment

As noted in the Preliminary Decision Memo, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination in this investigation with the final determination in the companion antidumping duty (''AD'') investigation of steel shelves from the PRC.[5] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than June 30, 2014, unless postponed.

Preliminary Determination and Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an estimated individual countervailable subsidy rate for each producer/exporter of the subject merchandise individually investigated. We preliminarily determine these rates to be:

Company	Subsidy rate
Ningbo ETDZ Huixing Trade Co., Ltd.	12.21
NanjingTopsun Racking Manufacturing Co., Ltd.	14.53
All Others	13.37
Dalian Huameilong Metal Products Co., Ltd.*	55.75
Dongguan Yuan Er Sheng Machinery Source Hardware Co., Ltd.*	55.75
Dong Rong Metal Products Co., Ltd.*	55.75
Global Storage Equipment Manufacturer Limited*	55.75
Intradin (Shanghai) Import & Export Co., Ltd.*	55.75
Jinhua Development District Hongfa Tool, Ltd.*	55.75

[1] The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion.

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Decision Memorandum for the Preliminary Determination,'' dated concurrently with this notice (''Preliminary Decision Memo'').

[3] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''IA ACCESS'') to AD and CVD Centralized Electronic Service System (''ACCESS''). The Web site location was changed from *http://iaaccess.trade.gov* to *http://access.trade.gov.* The Final Rule changing the references to the Regulations can be found at 79 FR 69046.

[4] *See* sections 776(a) and (b) of the Act.

[5] *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China,* 79 FR 56562 (September 22, 2014).

Company	Subsidy rate
Kunshan Jisheng Metal & Plastic Co., Ltd.*	55.75
Nanjing Huade Warehousing Equipment Manufacturing Co. Ltd.*	55.75
Nanjing Whitney Metal Products Co., Ltd.*	55.75
Nanjing Yodoly Logistics Equipments Manufacturing Co., Ltd.*	55.75
Ningbo Decko Metal Products Trade Co., Ltd.*	55.75
Ningbo Haifa Metal Works Co., Ltd.*	55.75
Ningbo HaiFa Office Equipment Co., Ltd.*	55.75
Ningbo TLT Metal Products Co., Ltd.*	55.75

* Non-cooperative company to which an adverse facts available rate is being applied. *See* ''Use of Facts Otherwise Available and Adverse Inferences'' section in the Preliminary Decision Memorandum.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of steel shelves from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above.

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we apply an ''all-others'' rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all-others'' rate by weighted averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, for the ''all-others'' rate, we calculated a simple average of the two responding firms' rates.

Disclosure and Public Comment

The Department will disclose calculations performed for this preliminary determination to the parties within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments for all non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[7] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (''ITC'') of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: January 23, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memo

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Alignment
VI. Respondent Selection
VII. Voluntary Respondent Treatment
VIII. Injury Test
IX. Application of Countervailing Duty Law to Imports from the PRC
X. Subsidies Valuation
XI. Use of Facts Otherwise Available and Adverse Inferences
XII. Analysis of Programs
XIII. Verification
XIV. Conclusion

[FR Doc. 2015–01816 Filed 1–29–15; 8:45 a.m.]

BILLING CODE 3510–DS–P

[6] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[7] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

National Oceanic And Atmospheric Administration

[Docket No. 150114039–5039–01]

RIN 0648–XD719

Higher Initial Maximum Uniform Allowance Rate; Uniform Allowances

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

ACTION: Notice; request for comments.

SUMMARY: The NMFS Office of Law Enforcement (OLE) is planning to establish a higher initial maximum uniform allowance to procure and issue uniform items for uniformed enforcement officers (EOs). OLE has changed its uniform policy, now requiring five classes of uniforms. Until now, EOs were only required to have two classes of uniforms. This change affects 30 current EOs, 25 planned new EOs in 2015, and any future EOs.

Current OPM regulations allow an agency to establish one or more initial maximum uniform allowance rates greater than the government-wide maximum uniform allowance rate.

DATES: NMFS must receive comments on or before March 2, 2015.

ADDRESSES: You may submit comments, identified by RIN 0648–XD719 and Uniform Allowances, by either of the following methods:

Email: uniform.allowances@noaa.gov.

Mail: NMFS Office of Enforcement, National Training Coordinator, 1315 East West Highway, Suite 3301, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Everett Baxter, 301–427–8272.

SUPPLEMENTARY INFORMATION: NMFS plans to implement a higher initial maximum uniform allowance to procure and furnish uniform items for its EOs. The current $800.00 annual limit is inadequate to maintain the uniform standards and professional image expected of NMFS EOs under its new uniform standards. OLE now has a new uniform policy requiring five classes of uniforms. In the past, EOs only had two classes of uniforms. This increase in uniform classes requires an increase in the initial maximum uniform allowance for EOs, from $800 to $2,000.00.

This implementation is in accordance with 5 CFR 591.104, which states that an agency may establish one or more initial maximum uniform allowance rate greater than the government-wide maximum uniform allowance rate established by the Office of Personnel Management under 5 CFR 591.103. Under 5 CFR 591.104, to establish a new rate, agencies must ''publish in the **Federal Register** and request comment on a notice setting out: (1) A description and justification of the circumstances requiring a higher initial maximum uniform allowance rate; (2) An estimate of the number of employees affected; (3) The specific items required for the basic uniform and the average total uniform cost for the affected employees; (4) The amount of the proposed higher initial maximum uniform allowance rate to be paid during the year the employee first becomes subject to the uniform requirement; (5) The proposed effective date of the higher initial maximum uniform allowance rate; and, (6) The intent of the agency (if any) to divide the cost of a minimum basic uniform and continue to make higher initial maximum basic uniform allowance payments in the year following the year the employee first becomes subject to the uniform requirement.''

As noted above, a new rate is justified because OLE's current uniform policy requires EOs to have five classes of uniforms, versus the two classes of uniforms required under the previous policy. This change in NMFS' initial maximum uniform allowance affects 30 current EOs, 25 planned new EOs in 2015, and any future EOs. The new NMFS' required EO uniforms include the following items or similar items: Gore-Tex gloves; 6-pocket pants; long sleeve uniform shirts; short sleeve uniform shirts; polo shirts; sweaters; turtlenecks; cold weather duty jackets; summer duty shirts; ceremonial jackets; ceremonial hats, straps and cords; utility shorts; ties; dress shoes; leather boots; dress pants; shoulder patches, and cloth badges. The average total initial uniform cost for these listed items is $2,000.00. Based on these current costs, NMFS is planning to increase the initial maximum uniform allowance for its EOs to $2,000.00. This increased initial maximum uniform allowance is applicable to existing EOs during the first year of the new NMFS uniform policy, and for EOs hired in 2015. In subsequent years, this initial maximum uniform allowance will be applied to each new EO as he or she becomes subject to the uniform requirements. Subsequent annual uniform allowances will be the maximum allowed by 5 CFR 591.103. Currently, approximately 55 EOs will be effected by this increased initial maximum uniform allowance; 30 current EOs and 25 planned new hire EOs. The effective date of this higher initial maximum uniform allowance rate is April 1, 2015.

Authority: 5 U.S.C. 5903; E.O. 12748, 56 FR 4521, 3 CFR 1991 Comp., p. 316.

Dated: January 27, 2015.

Matthew G. Brandt,

Acting Director, Office of Law Enforcement, National Marine Fisheries Service.

[FR Doc. 2015–01810 Filed 1–29–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the procurement list.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received On Or Before:* 3/2/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

For Further Information Or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

PRODUCT NAMEs/NSNs: Pen, 1.4mm Bold, Ballpoint with Clip, Cushion Grip, Black Ink, Refillable/7520–00–NIB–1969
Pen, 1.4mm Bold, Ballpoint with Clip, Cushion Grip, Blue Ink, Refillable/7520–00–NIB–1970
Pen, 1.4mm Bold, Ballpoint with Clip, Cushion Grip, Red Ink, Refillable/7520–00–NIB–1971
MANDATORY SOURCE OF SUPPLY: Industries of the Blind, Inc., Greensboro, NC
MANDATORY FOR PURCHASE BY: Total Government Requirement
CONTRACTING ACTIVITY: General Services Administration, New York, NY
LIST TYPE: A-List

PRODUCT NAMEs/NSNs: Pen, Stick, Plastic Fine Point, Water Resistant Permanent Black Ink 7520–00–NIB–2284
Pen, Stick, Plastic Fine Point, Water Resistant Permanent Blue Ink 7520–00–NIB–2285
Pen, Stick, Plastic Fine Point, Water Resistant Permanent Red Ink 7520–00–NIB–2286
Pen, Stick, Plastic Medium Point, Water Resistant Permanent Black Ink/7520–00–NIB–2289
Pen, Stick, Plastic Medium Point, Water Resistant Permanent Blue Ink 7520–00–NIB–2290
Pen, Stick, Plastic Medium Point, Water Resistant Permanent Red Ink 7520–00–NIB–2291
MANDATORY SOURCE OF SUPPLY: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
MANDATORY FOR PURCHASE BY: Total Government Requirement/Broad Government Requirement
CONTRACTING ACTIVITY: General Services Administration, New York, NY
LIST TYPEs: A-List (–2284 thru –2286 and –2289)

B-List (–2290 thru –2291)

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–01786 Filed 1–29–15; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed Opportunity Youth Evaluation Bundling study. The primary purpose of the study is to conduct an outcome evaluation on the common interventions of select AmeriCorps State and National grantees engaging opportunity youth as AmeriCorps members. The project is an effort to generate rigorous outcome evidence, leverage limited evaluation resources, and build the evaluation capacity of smaller AmeriCorps State and National grantees. Collection of this data is not required for obtaining grant funding support from CNCS.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 31, 2015.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Research and Evaluation; Attention Adrienne DiTommaso, Research Analyst, 10th floor, 10902A; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Adrienne DiTommaso, 1–202–606–3611, or by email at *aditommaso@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Background

The primary purpose of the study is to conduct an outcome evaluation on the common interventions of select AmeriCorps State and National grantees engaging opportunity youth as AmeriCorps members. The project is an effort to generate rigorous outcome evidence, leverage limited evaluation resources, and build the evaluation capacity of smaller AmeriCorps State and National grantees. At the same time, it is an effort to test a new evaluation approach that has the potential to enhance the ability of any small program to gather and utilize outcome data. Collection of this data is not required for obtaining grant funding support from CNCS.

Current Action

This is a new information collection request. This study would administer a 15 minute, online or telephone survey to opportunity youth who are engaged as AmeriCorps members in select programs participating in the study. Additionally, a statistically matched comparison group of opportunity youth not engaged as AmeriCorps members would receive the survey. The survey consists of three sections of questions querying respondents about educational attainment, employment status, and civic engagement, intending to assess educational, employment and civic engagement outcomes achieved as a result of participating in the AmeriCorps program.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Opportunity Youth Evaluation Bundling project.

OMB Number: None.

Agency Number: None.

Affected Public: Opportunity youth engaged in select AmeriCorps State and National programs, and a group of statistically matched comparison youth not participating in an AmeriCorps State and National program.

Total Respondents: 640.

Frequency: Three times.

Average Time per Response: Averages 15 minutes.

Estimated Total Burden Hours: 480.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 26, 2015.

Steve Plank,

Director of Research and Evaluation, Office of Research and Evaluation.

[FR Doc. 2015–01830 Filed 1–29–15; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Day of

Service Project Collection Tool for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, David Premo, at 202–606–6717 or email to *dpremo@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on Thursday, November 6, 2014. This comment period ended January 5, 2015. No public comments were received from this Notice.

Description: CNCS wants to help promote activities across the country and also be able to assess impact of CNCS initiatives.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Day of Service Project Promotion Tool.

OMB Number: 3045–0122.

Agency Number: None.

Affected Public: Any person or group organizing a service project in conjunction with a CNCS Initiative.

Total Respondents: 100,000.

Frequency: 6 times annually.

Average Time per Response: Averages 10 minutes.

Estimated Total Burden Hours: 100,000.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 27, 2015.

Theodore Miller,

Chief of External Affairs.

[FR Doc. 2015–01831 Filed 1–29–15; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2015–HA–0008]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 31, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, Performance Evaluation & Transition Management Branch, ATTN: Ann Fazzini, 16401 E. Centretech Parkway, Aurora, CO 80011–9066, telephone 303–676–3613.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Health Insurance Claim Form, UB–04 CMS.1450, OMB Number 0720–0013.

Needs and Uses: The information collection requirement is necessary for a medical institution to claim benefits under the Defense Health Program, TRICARE which includes the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). The information collected will be used by TRICARE/CHAMPUS to determine beneficiary eligibility, other health insurance liability, certification that the beneficiary received the care, and that the provider is authorized to receive TRICARE/CHAMPUS payments. The form will be used by TRICARE/CHAMPUS and its contractors to determine the amount of benefits to be paid by TRICARE/CHAMPUS to institutional providers.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 135,000.

Number of Respondents: 540,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

This collection instrument is for use by medical institutions filing for

reimbursement with the Defense Health Program, TRICARE, which includes the Civilian Health and Medical Program of the Uniformed Services (TRICARE/CHAMPUS). TRICARE/CHAMPUS is a health benefits entitlement program for the dependents of active duty members of the Uniformed Services, and deceased sponsors, retirees and their dependents, of the Department of Homeland Security (Coast Guard) sponsors and certain North Atlantic Treaty Organization, National Oceanic and Atmospheric Administration, and Public Health Service eligible beneficiaries. Use of the UB–04/CMS–1450 continues TRICARE/CHAMPUS commitments to use the national standard claim form for reimbursement of medical services/supplies provided by institutional providers.

Dated: January 27, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–01793 Filed 1–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of Army

Notice of Intent To Seek Partners for a Cooperative Research and Development Agreement and Licensing Opportunity for Smoothed Symbol Transition Modulation Invented by U.S. Army Aviation and Missile Command

AGENCY: Department of Army, DoD.

ACTION: Notice of Intent Seeking Partners.

SUMMARY: The U.S. Army Aviation and Missile Command (AMRDEC) is seeking Cooperative Research and Development Agreement (CRADA) partners to collaborate in transitioning smoothed symbol transition modulation (SSTM) into commercial and/or government application(s). SSTM references approved for public release are provided [2–4]. Interested potential CRADA collaborators will receive detailed information on the current status of the project after signing a confidentiality disclosure agreement (CDA) with AMRDEC. Guidelines for the preparation of a full CRADA proposal will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA applications submitted after the due date may be considered if a suitable CRADA collaborator has not been identified by AMRDEC among the initial pool of respondents. Licensing of background technology related to this CRADA opportunity is also available to potential collaborators.

DATES: Interested candidate partners must submit a statement of interest and capability to the AMRDEC point of contact before March 8, 2015 for consideration.

ADDRESSES: Comments and questions may be submitted to: Department of Army, US Army Research, Development and Engineering Command, Aviation and Missile Research, Development and Engineering Center, ATTN: RDMR–CST, Office of Research and Technology Applications (Ms. Wallace), 5400 Fowler Road, Redstone Arsenal, AL 35898.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action can be directed to Ms. Cindy Wallace (256) 313–0895, Office of Research and Technology Applications, email: *cindy.s.wallace.civ@mail.mil*.

SUPPLEMENTARY INFORMATION:

1. Project Description. AMRDEC seeks to ensure that technologies developed by AMRDEC are expeditiously commercialized and brought to practical use. The purpose of a CRADA is to find partner(s) to facilitate the development and commercialization of a technology that is in an early phase of development. Respondents interested in submitting a CRADA proposal should be aware that it may be necessary for them to secure a patent license to the above-mentioned patent pending technology in order to be able to commercialize products arising from a CRADA. CRADA partners are afforded an option to negotiate an exclusive license from the AMRDEC for inventions arising from the performance of the CRADA research plan.

2. Technology Overview. Conventional modulation techniques have step changes between symbols. The step changes embed rectangular windowing functions, with poor power spectral density function characteristics, into the modulated waveform [1], [2], [3].

Smoothed symbol transition modulation (SSTM) [1], [2], [3], [4] waveform consists of half cycle raised cosine waveforms and zero slope line segments waveforms concatenated together to create a smooth waveform. All SSTM symbol transitions occur at zero slope points. The SSTM waveform requires less bandwidth and has a much faster power spectral density convergence than conventional modulation.

Binary SSTM and 16 quadrature amplitude modulation SSTM (QAM–SSTM) simulations demonstrate the utility of the modulation technique [1], [2], [3], [4]. Smoothed symbol transition modulation simply adds one more block before the output (final) modulation stage [1], [2], [3], [4]. SSTM offers opportunities for improved performance under intersymbol interference, multipath signal conditions, dispersive channel conditions and timing jitter conditions. In terms of digital signal processing, SSTM is low cost, and offers significant performance improvements over conventional rectangular windowing function limited modulators.

Under the CRADA, further research and development will be conducted on current and new algorithm(s) and further development in characterization is also needed. Based on the results of these experiments and other data, the program will then develop a target product profile. The developed algorithm(s) might be further improved to address specific aspects of this target product profile and, if necessary, to optimize its computation requirements and performance. The CRADA scope will also include studies beyond candidate selection including all aspects of algorithm studies, developments, simulations, optimization, and performance testing leading to a successful smoothed symbol transition modulation application.

Collaborators should have experience in the development of digital signal processing algorithms, digital modulation, software defined radios, communications systems, and technology transition. The target end products include government and commercial communications systems, wireless applications (radio, television, WiFi, telecom, cell phones, data, satellite communications, et al.), radar, internet applications (cable modems), medical imaging, and other unique applications identified by the CRADA partner.

The full CRADA proposal should include a capability statement with a detailed description of collaborators' expertise in the following and related technology areas: (1) Conventional digital modulation, digital signal processing, software defined radios, communications systems, testing and evaluation of communications systems, etc.; (2) communications theory, information theory, and bit error rate; (3) expertise in windowing functions; (4) collaborators' expertise in successful technology transition; and (5) collaborator's ability to provide adequate funding to support some project studies is strongly encouraged. A preference will be given to collaborators

who shall manufacture smoothed symbol transition modulation systems in the United States.

Collaborators are encouraged to properly label any proprietary material in their CRADA proposal as PROPRIETARY. Do not use the phrase ''company confidential.''

3. Publications.

a. P. Jungwirth: ''Smoothed Symbol Transition Modulation,'' US Patent Application 14/181221, February 14, 2014. Not yet published.

b. P. Jungwirth: ''Smoothed Symbol Transition Modulation,'' AlaSim International Conference & Exposition,'' Huntsville, Alabama, pp. TBD, May 2014. *http://www.almsc.org/alasim-international.shtml.*

c. P. Jungwirth: ''Smoothed Symbol Transition Modulation DSP Algorithm,'' TAPR Conference, Austin, TX, pp. 32–51, September 2014. *https://www.tapr.org/pdf/DCC2014-SmoothedSymbolTransitionModulation-Patrick-Jungwirth.pdf.*

d. P. Jungwirth: ''Smoothed Symbol Transition Modulation 16 QAM, Submitted to The Forum for Communications Experimenters, December 2014. (email Ms. Wallace at *cindy.s.wallace.civ@mail.mil* to request a copy of this paper).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–01760 Filed 1–29–15; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2015–0006]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DoD Acquisition Process (Various Miscellaneous Requirements)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through May 31, 2015. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by March 31, 2015.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0187, using any of the following methods:

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

○ Email: *osd.dfars@mail.mil.* Include OMB Control Number 0704–0187 in the subject line of the message.

○ Fax: (571) 372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense (571) 372–6106.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements), Defense Federal Acquisition Regulations Supplement (DFARS) parts 208, 209, and 235 and associated clauses in part 252; OMB Control Number 0704–0187.

Needs and Uses: This information collection requirement pertains to information required in DFARS parts 208, 209, 235, and associated clauses in part 252 that an offeror must submit to DoD in response to a request for proposals or an invitation for bids or a contract requirement. DoD uses this information to—

• Determine whether to provide precious metals as Government-furnished material;

• Determine an entity's eligibility for award of a contract under a national security program due to ownership or control by a foreign government;

• Determine whether there is a compelling reason for a contractor to enter into a subcontract in excess of $30,000 with a firm, or subsidiary of a firm, that is identified in the List of Parties Excluded from Federal Procurement and Nonprocurement as being ineligible for award of Defense subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism;

• Determine an entity's eligibility for award of a contract due to ownership or control by the government of a country that is a state sponsor of terrorism;

• Evaluate claims of indemnification for losses or damages occurring under a research and development contract; and

• Keep track of radio frequencies on electronic equipment under research and development contracts so that the user does not override or interfere with the use of that frequency by another user.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,464.

Number of Respondents: 491.

Responses per Respondent: Approximately 2.

Annual Responses: 1,062.

Average Burden per Response: 1.5 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection pertains to information, as required in DFARS Parts 208, 209, 235, and associated clauses in Part 252 that an offeror must submit to DoD in response to a request for proposals or an invitation for bids or a contract requirement, except that provision 252.209–7001 was recently relocated to 252.225–7050. The 1 burden hour for this provision will be transferred to OMB clearance 0704–0229 (part 225) the next t ime that clearance is renewed. In particular, the information collection covers the following DFARS requirements:

○ *252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material.* Paragraph (b) of this clause requires an offeror to cite the type and quantity of precious metals required in the performance of the contract. Paragraph (c) requires the offeror to submit two prices for each deliverable item that contains precious metals: One based on the Government furnishing the precious metals, and the other based on the contractor furnishing the precious metals.

○ *252.209–7002, Disclosure of Ownership or Control by a Foreign Government.* Paragraph (d) requires the offeror to provide a disclosure with its offer of any interest a foreign government has in the offeror when that interest constitutes control of the offeror by a foreign government.

○ *252.209–7004, Subcontracting with Firms that are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism.* Paragraph (b) requires the Contractor to notify the contracting officer in writing before entering into a subcontract in excess of $30,000 with a party that is identified in the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as being ineligible for award of Defense subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism. The contractor must provide the name of the proposed subcontractor and the compelling reasons for doing business with the subcontractor.

○ *252.225–7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.* Paragraph (c) of this provision requires an offeror to provide a disclosure with its offer if the government of a country that is a state sponsor of terrorism has a significant interest in the offeror, in a subsidiary of the offeror, or in a parent company of which the offeror is a subsidiary.

○ *252.235–7000, Indemnification under 10 U.S.C. 2534—Fixed Price; 252.235–7001, and Indemnification under 10 U.S.C. 2534—Cost-Reimbursement.* Paragraphs (f) and (e), respectively, of these clauses require contractors to notify the contracting officer of any claim and provide (i) proof or evidence of a claim and (ii) copies of all pertinent papers when the contractor is to be indemnified.

○ *DFARS 252.235–7003, Frequency Authorization.* Paragraph (b) requires that the contractor or subcontractor provide to the contracting officer the technical operating characteristics for any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2015–01762 Filed 1–29–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Installation of a Terminal Groin Structure at the Eastern End of Ocean Isle Beach, Extending Into the Atlantic Ocean, West of Shallotte Inlet (Brunswick County, NC)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Changes to public hearing and comment period end dates.

SUMMARY: The comment period for the DEIS published in the **Federal Register** on January 23, 2015, required comments be submitted on or before March 9, 2015. The DEIS comment period has been changed to March 16, 2015. Additionally, the Public Hearing date has been changed to March 3, 2015.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Tyler Crumbley, Wilmington Regulatory Field Office, telephone: (910) 251–4170, facsimile (910) 251–4025, or email at *tyler.crumbley@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–01761 Filed 1–29–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 8,227,651: HIGH DENSITY RENEWABLE FUELS BASED ON THE SELECTIVE DIMERIZATION OF PINENES//Patent Application Serial No. 13/426294: PROCESS AND APPARATUS FOR THE SELECTIVE DIMERIZATION OF TERPENES AND ALPHA-OLEFIN OLIGOMERS WITH A SINGLE-STAGE REACTOR AND A SINGLE-STAGE FRACTIONATION SYSTEM//Patent Application Serial No. 13/426347: PROCESS AND APPARATUS FOR THE SELECTIVE DIMERIZATION OF TERPENES AND ALPHA-OLEFIN OLIGOMERS WITH A SINGLE-STAGE REACTOR AND A SINGLE-STAGE FRACTIONATION SYSTEM//Patent Application Serial No. 13/426393: PROCESS AND APPARATUS FOR THE SELECTIVE DIMERIZATION OF TERPENES AND ALPHA-OLEFIN OLIGOMERS WITH A SINGLE-STAGE REACTOR AND A SINGLE-STAGE FRACTIONATION SYSTEM//Patent Application Serial No. 13/604115: METHODS FOR THE PRODUCTION OF RENEWABLE DIMETHYL JP–10//Patent Application Serial No. 13/605436: EFFICIENT CONVERSION OF PURE AND MIXED TERPENE FEEDSTOCKS TO HIGH DENSITY FUELS//Patent Application Serial No. 13/861198: RENEWABLE HIGH DENSITY TURBINE AND DIESEL FUELS//Patent Application Serial No. 14/171855: RENEWABLE HIGH-DENSITY, HIGH-OCTANE FUELS.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106.

FOR FURTHER INFORMATION CONTACT: Michael D. Seltzer, Ph.D., Head, Technology Transfer Office, Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, telephone 760–939–1074, FAX 760–939–1210, Email: *michael.seltzer@navy.mil.*

SUPPLEMENTARY INFORMATION: Crude sulfate turpentine, a waste by-product of the kraft paper process, is a renewable and inexpensive source of terpenes, which can be converted, through catalytic dimerization, to high-performance renewable fuels having potential application as significant components of jet, diesel, and tactical fuels.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: January 23, 2015.

P.A. Richelmi,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2015–01815 Filed 1–29–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11:00 a.m. to 12:00 p.m. on March 2, 2015, will address new, pending, administrative and minor disciplinary infractions and non-judicial punishments involving the Midshipmen attending the U.S. Naval Academy to include, but not limited to, individual honor or conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on March 2, 2015, from 8:30 a.m. to 11:00 a.m. The executive session held from 11:00 a.m. to 12:00 p.m. will be the closed portion of the meeting.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, MD. The meeting will be handicapped accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eric Madonia, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on March 2, 2015, will consist of discussions of law enforcement investigations into allegations of criminal activity, new, pending, administrative and minor disciplinary infractions and nonjudicial punishments involving Midshipmen attending the Naval Academy to include, but not limited to, individual honor or conduct violations within the Brigade and personnel issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Chairman of the U.S. Naval Academy Board of Visitors has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:00 a.m. to 12:00 p.m. will be concerned with matters protected from public hearing by sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Authority: 5 U.S.C. 552b.

Dated: January 23, 2015.

P.A. Richelmi,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2015–01832 Filed 1–29–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2015–ICCD–0009]

Agency Information Collection Activities; Comment Request; Lender's Application Process (LAP)

AGENCY: 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 an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 31, 2015.

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 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 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Courtney Clemons, (202) 377–3673.

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: Lender's Application Process (LAP).

OMB Control Number: 1845–0032.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 10.

Total Estimated Number of Annual Burden Hours: 2.

Abstract: The Lender's Application Process (LAP) is submitted by lenders who are eligible for reimbursement of interest and special allowance, as well as Federal Insured Student Loan (FISL) claims payment, under the Federal Family Education Loan Program. The information will be used by ED to update Lender Identification Numbers (LID's), lender names, addresses with 9 digit zip codes, and other pertinent information.

Dated: January 26, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–01706 Filed 1–29–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Intent To Grant Exclusive License

AGENCY: National Energy Technology Laboratory, Department of Energy.

ACTION: Notice of Intent To Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). The National Energy Technology Laboratory (NETL) hereby gives notice of its intent to grant an exclusive license to practice the invention described and claimed in U.S. Patent Application Number 61/995,405, entitled ''Ionic Solvent for the Aluminum Electroplating Process'' to LumiShield Technologies, having its principal place of business in Pittsburgh, PA. The invention is owned jointly by the United States of America, as represented by the Department of Energy, and Carnegie Mellon University. The prospective exclusive license complies with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than February 17, 2015. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Comments, applications for nonexclusive licenses, or objections relating to the prospective exclusive license should be submitted to Jessica Sosenko, Technology Transfer Program Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: Jessica Sosenko, Technology Transfer Program Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA 15236–0940; Telephone (412) 386–7417; Email: *jessica.sosenko@netl.doe.gov.*

SUPPLEMENTARY INFORMATION: Section 209(c) of title 35 of the United States Code gives the U.S. Department of Energy (DOE) the authority to grant exclusive or partially exclusive licenses in Department-owned inventions where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely to be achieved expeditiously, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written comments and objections.

LumiShield, a small business, has applied for an exclusive license to practice the invention and has a plan for commercialization of the invention. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 15 days of publication of this notice, NETL's Technology Transfer Manager (contact information listed above), receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which the applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license will be exclusive, subject to a license and other rights retained by the United States, and subject to a negotiated royalty. DOE will review all timely written responses to this notice, and will grant the license if, after expiration of the 15-day notice period, and after consideration of any written responses to this notice, a determination is made in accordance with 35 U.S.C. 209(c) that the license is in the public interest.

Issued: January 12, 2015.

Grace M. Bochenek,

Director, National Energy Technology Laboratory.

[FR Doc. 2015–01785 Filed 1–29–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Information Collection Extension

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

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) announces receipt of the approval of the Office of Management and Budget (OMB) to extend until November 30, 2017, DOE's information collection under control number 1910–1400 pursuant to the requirements of the Paperwork Reduction Act of 1995.

DATES: Information Collection under OMB control number 1910–1400 has been extended until November 20, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: Title III, Part B 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. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part C of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) [1]

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 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); 42 U.S.C. 6314) 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))

DOE satisfied its requirements under the Paperwork Reduction Act of 1995 with respect to its information collection attendant to effective implementation of its Energy Conservation Program under control number 1910–1400. The information collection under control number 1910–1400 includes reports and data created in support of DOE's Appliance Standards Program. Specifically, the extension of information collection

[1] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were re-designated as parts A and A–1, respectively, in the United States Code.

applies to the following aspects of the appliance standards program: (1) Manufacturer submission of certification and compliance reports for covered basic models subject to an applicable energy conservation standard; (2) records relating to the certification requirements set forth in 10 CFR 429 and 431, including test data and associated calculations underlying certified ratings of covered products and equipment submitted on the certification and compliance reports for each covered basic model distributed in commerce in the US; and (3) records related to applications for a test procedure waiver submitted by a manufacturer pursuant to 10 CFR 430.27 and 431.401 and related to one or more basic models that manufacturer believes cannot be tested pursuant to the applicable DOE test procedure. This collection includes all covered products and equipment subject to DOE's regulatory requirements described in 10 CFR parts 429, 430, and 431. The annual estimated number of burden hours under this extension is 30 hours per company.

Covered products and equipment generally include: (1) Refrigerators, refrigerator-freezers and freezers; (2) Room air conditioners; (3) Central air conditioners and heat pumps, including SDHV and Space-Constrained; (4) Residential water heaters; (5) Residential furnaces, including boilers; (6) Dishwashers; (7) Residential clothes washers; (8) Residential clothes dryers; (9) Direct heating equipment; (10) Conventional cooking tops, conventional ovens, microwave ovens; (11) Pool heaters; (12) Fluorescent lamp ballasts; (13) General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps; (14) Faucets; (15) Showerheads; (16) Water closets; (17) Urinals; (18) Ceiling fans; (19) Ceiling fan light kits; (20) Torchieres; (21) Compact fluorescent lamps; (22) Dehumidifiers; (23) Class A external power supplies; (24) Non-class A external power supplies; (25) Battery chargers; (26) Candelabra base incandescent lamps and intermediate base incandescent lamps; (27) Electric motors; (28) Small electric motors; (29) Commercial refrigerators, freezers, and refrigerator-freezers; (30) Commercial air conditioners and heat pumps (air-cooled, water-cooled, and water-sourced); (31) Packaged terminal air conditioners and heat pumps; (32) Single package vertical units; (33) Variable refrigerant flow systems; (34) Computer room air conditioners; (35) Commercial water heating equipment; (36) Commercial warm air furnaces; (37) Commercial packaged boilers; (38) Automatic commercial ice makers; (39) Commercial clothes washers; (40) Distribution transformers; (41) Illuminated exit signs; (42) Traffic signal modules and pedestrian modules; (43) Commercial unit heaters; (44) Commercial pre-rinse spray valves; (45) Refrigerated bottled or canned beverage vending machines; (46) Walk-in coolers and walk-in freezers, including each of the components (doors/panels/refrigeration system); (47) Metal halide lamp ballasts and fixtures; (48) Furnace fans; (49) General service lamps; (50) Unfired hot water storage tanks; (51) Hot water supply boilers; (52) Television sets; (53) Pumps; (54) Fans; and (55) Compressors. DOE extended the information collection to cover similar data elements for three new product types, in the event that DOE ultimately issues a coverage determination: Miscellaneous refrigeration products (proposed); Portable air conditioners (proposed); and (58) Computing equipment (proposed). DOE also extended the information collection to allow DOE to collect additional data elements historically collected by the Federal Trade Commission (FTC) in furtherance of a single submission of energy data for both DOE and FTC through DOE's Compliance Certification Management System (CCMS).

DOE requested and received OMB approval to extend the information collection for three years. DOE published two notices in the **Federal Register** announcing that DOE had begun the information collection under control number 1910–1400 and seeking comment on the information collection. 78 FR 77668 (December 24, 2013) and 79 FR 11426 (February 28, 2014). In response to DOE's request, OMB approved DOE's information collection requirements covered under OMB control number 1910–1400 through November 30, 2017.

Issued in Washington, DC, on January 16, 2015.

Kathleen B. Hogan,

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

[FR Doc. 2015–01781 Filed 1–29–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3184–004; ER10–2805–004; ER10–2564–005; ER10–2600–005; ER10–2289–005.

Applicants: FortisUS Energy Corporation, Central Hudson Gas & Electric Corporation, Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

Description: Notification of Changes in Status of the Fortis, Inc. subsidiaries.

Filed Date: 1/23/15.

Accession Number: 20150123–5165.

Comments Due: 5 p.m. ET 2/13/15.

Docket Numbers: ER15–892–000.

Applicants: Future Power PA LLC.

Description: Request for Limited Waiver, Shortened Answer Period, and Expedited Action of Future Power PA LLC.

Filed Date: 1/22/15.

Accession Number: 20150122–5131.

Comments Due: 5 p.m. ET 1/30/15.

Docket Numbers: ER15–893–000.

Applicants: California Independent System Operator Corporation.

Description: Tariff Withdrawal per 35.15: 2015–01–22_GraniteWindTermination to be effective 3/16/2015.

Filed Date: 1/22/15.

Accession Number: 20150122–5181.

Comments Due: 5 p.m. ET 2/12/15.

Docket Numbers: ER15–894–000.

Applicants: Kentucky Utilities Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Re-Collation to be effective 1/24/2015.

Filed Date: 1/23/15.

Accession Number: 20150123–5054.

Comments Due: 5 p.m. ET 2/13/15.

Docket Numbers: ER15–895–000.

Applicants: Kentucky Utilities Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Re-Collation to be effective 1/24/2015.

Filed Date: 1/23/15.

Accession Number: 20150123–5055.

Comments Due: 5 p.m. ET 2/13/15.

Docket Numbers: ER15–896–000.

Applicants: LG&E Energy Marketing Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Re-Collation to be effective 1/24/2015.

Filed Date: 1/23/15.

Accession Number: 20150123–5059.
Comments Due: 5 p.m. ET 2/13/15.

Docket Numbers: ER15–897–000.
Applicants: Louisville Gas and Electric Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Re-Collation to be effective 1/24/2015.
Filed Date: 1/23/15.
Accession Number: 20150123–5061.
Comments Due: 5 p.m. ET 2/13/15.

Docket Numbers: ER15–898–000.
Applicants: Louisville Gas and Electric Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Re-Collation to be effective 1/24/2015.
Filed Date: 1/23/15.
Accession Number: 20150123–5064.
Comments Due: 5 p.m. ET 2/13/15.

Docket Numbers: ER15–899–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2986 KCP&L GMO and Entergy Services, Inc. Attachment AO to be effective 1/19/2015.
Filed Date: 1/23/15.
Accession Number: 20150123–5066.
Comments Due: 5 p.m. ET 2/13/15.

Docket Numbers: ER15–900–000.
Applicants: Marshfield Utilities.
Description: Baseline eTariff Filing per 35.1: Baseline new to be effective 3/1/2015.
Filed Date: 1/23/15.
Accession Number: 20150123–5155.
Comments Due: 5 p.m. ET 2/13/15.

Docket Numbers: ER15–901–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 4th Quarter 2014 Update to OA/RAA Membership Lists to be effective 12/31/2014.
Filed Date: 1/23/15.
Accession Number: 20150123–5189.
Comments Due: 5 p.m. ET 2/13/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–10–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Application for Authorization of the Assumption of Liabilities and Issuance of Securities Under Section 204 of the Federal Power Act of Wolverine Power Supply Cooperative, Inc.
Filed Date: 1/23/15.
Accession Number: 20150123–5153.
Comments Due: 5 p.m. ET 2/13/15.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF15–300–000.
Applicants: UB Fuel Cell, LLC.
Description: Form 556 of UB Fuel Cell, LLC.
Filed Date: 1/15/15.
Accession Number: 20150115–5308.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–01745 Filed 1–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–285–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Penalty Revenue Crediting Report of Columbia Gas Transmission, LLC under RP15–285.
Filed Date: 12/29/14.
Accession Number: 20141229–5202.
Comments Due: 5 p.m. ET 1/26/15.

Docket Numbers: RP15–286–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Penalty Revenue Crediting Report of Columbia Gulf Transmission, LLC under RP15–286.
Filed Date: 12/29/14.
Accession Number: 20141229–5203.
Comments Due: 5 p.m. ET 1/26/15.

Docket Numbers: RP15–287–000.
Applicants: Crossroads Pipeline Company.
Description: Penalty Revenue Crediting Report of Crossroads Pipeline Company under RP15–287.
Filed Date: 12/29/14.
Accession Number: 20141229–5205.
Comments Due: 5 p.m. ET 1/26/15.

Docket Numbers: RP15–288–000.
Applicants: Central Kentucky Transmission Company.
Description: Penalty Revenue Crediting Report of Central Kentucky Transmission Company under RP15–288.
Filed Date: 12/29/14.
Accession Number: 20141229–5208.
Comments Due: 5 p.m. ET 1/26/15.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP15–176–001.
Applicants: Discovery Gas Transmission LLC.
Description: Compliance filing per 154.203: Second Compliance Filing To Remove Costs From Rates to be effective 2/1/2015.
Filed Date: 1/21/15.
Accession Number: 20150121–5131.
Comments Due: 5 p.m. ET 2/2/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 22, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–01746 Filed 1–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–18–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed White Oak Mainline Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the White Oak Mainline Expansion Project (project) involving construction and operation of facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Chester County, Pennsylvania and New Castle County, Delaware. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on February 23, 2015.

You may submit comments in written form. Further details on how to submit written comments are in the Public Participation section of this notice. If you sent comments on this project to the Commission before the opening of this docket on November 21, 2014, you will need to file those comments in Docket No. CP15–18–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Eastern Shore provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

The project would provide 45,000 dekatherms per day of firm transportation service to Calpine Energy Services, L.P. (CES). CES would use this firm transportation service to supply natural gas fuel to its Garrison Energy Center, a 309 megawatt electric generation facility currently being constructed.

Specifically, the project would consist of the installation of the following facilities:

- approximately 7.2 miles of 16-inch-diameter pipeline looping (in two segments: Daleville and Kemblesville), and appurtenant facilities in Chester County, Pennsylvania; and
- an additional 3,550 horsepower of additional compression at Eastern Shore's existing Delaware City Compressor Station in New Castle County, Delaware.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The total land requirement to construct the project is approximately 189.25 acres, of which 168 acres are associated with the right-of-way and 21.25 acres are associated with temporary work spaces. A total of 22.9 acres would be maintained as a pipeline right-of-way. Upon completion of the project, the remaining land used for temporary workspace would be re-graded, stabilized and re-vegetated, and allowed to revert to pre-construction conditions.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Land use;
- geology and soils;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Pennsylvania and Delaware State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under Section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 23, 2015.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP15–18–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–18). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–01736 Filed 1–29–15; 8:45 am]

BILLING CODE 6717–01–P

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12796–004]

City of Wadsworth, Ohio; Notice of Availability of Environmental Assessment

January 23, 2015.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 **Federal Register** [FR] 47897), the Office of Energy Projects has reviewed the application for a major original license for the 50-megawatt Robert C. Byrd Hydroelectric Project (RC

Byrd Project or project), located on the Ohio River at the U.S. Army Corps of Engineers' (Corps) Robert C. Byrd Locks and Dam (RC Byrd Locks and Dam), approximately 12.7 miles south of the confluence of the Ohio River and the Kanawha River, 9 miles south of the Town of Gallipolis, Gallia County, Ohio, and prepared a Final Environmental Assessment (FEA) for the project. The proposed project would occupy 7.6 acres of federal land administered by the Corps.

The FEA contains staff's analysis of the potential environmental impacts of the proposed project and concludes that licensing the proposed project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Gaylord Hoisington by telephone at 202–502–6032 or by email at *gaylord.hoisington@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–01732 Filed 1–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–96–000]

Algonquin Gas Transmission, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Algonquin Incremental Market Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Algonquin Incremental Market Project (AIM Project), proposed by Algonquin Gas Transmission, LLC (Algonquin) in the above-referenced docket. Algonquin requests authorization to expand its existing pipeline system from an interconnection at Ramapo, New York to deliver up to 342,000 dekatherms per day of natural gas transportation service to the Connecticut, Rhode Island, and Massachusetts markets.

The final EIS assesses the potential environmental effects of the construction and operation of the AIM Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project would result in some adverse environmental impacts; however, most of these impacts would be reduced to less-than-significant levels with the implementation of Algonquin's proposed mitigation and the additional measures recommended in the final EIS.

The U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the final EIS, the agencies will present their own conclusions and recommendations in their respective records of decision or determinations for the AIM Project.

The final EIS addresses the potential environmental effects of the construction and operation of about 37.4 miles of pipeline composed of the following facilities:

- Replacement of 26.3 miles of existing pipeline with a 16- and 42-inch-diameter pipeline;
- extension of an existing loop [1] pipeline with about 3.3 miles of additional 12- and 36-inch-diameter pipeline within Algonquin's existing right-of-way; and
- installation of about 7.8 miles of new 16-, 24-, and 42-inch-diameter pipeline.

The AIM Project's proposed aboveground facilities consist of modifications to six existing compressor stations, to add a total 81,620 horsepower, in New York, Connecticut, and Rhode Island. Algonquin also proposes to abandon four existing compressor units for a total of 10,800 horsepower at one compressor station in New York.

The FERC staff mailed copies of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the area of the project; and parties to this proceeding. Paper copy versions of this final EIS were mailed to those specifically requesting them; all others received a CD version. However, we note that due to its voluminous size, the comment responses are provided as an electronic-only volume (Volume II) on a CD that was mailed to the entire mailing list. In addition, the final EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the NEPA, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of a final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process that allows other agencies or the public to make their views known. In such cases, an agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP14–96). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission,

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: January 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–01730 Filed 1–29–15; 8:45 am]

BILLING CODE 6717–01–P

	Docket Nos.
Nevada Power Company	ER10–2475–006, EL15–22–000
Sierra Pacific Power Company	ER10–2474–006
PacifiCorp	ER10–3246–003
Pinyon Pines Wind I, LLC	ER13–520–002
Pinyon Pines Wind II, LLC	ER13–521–002
Solar Star California XIX, LLC	ER13–1441–002
Solar Star California XX, LLC	ER13–1442–002
Topaz Solar Farms LLC	ER12–1626–003
CalEnergy, LLC	ER13–1266–003
CE Leathers Company	ER13–1267–002
Del Ranch Company	ER13–1268–002
Elmore Company	ER13–1269–002
Fish Lake Power LLC	ER13–1270–002
Salton Sea Power Generation Company	ER13–1271–002
Salton Sea Power L.L.C	ER13–1272–002
Vulcan/BN Geothermal Power Company	ER13–1273–002
Yuma Cogeneration Associates	ER10–2605–006
MidAmerican Energy Company.	
Bishop Hill Energy II LLC.	
Cordova Energy Company LLC.	
Power Resources, Ltd.	
Saranac Power Partners, L.P.	
Agua Caliente Solar, LLC	ER12–21–013]

On Thursday, January 29, 2015, Commission staff will meet with Nevada Power Company and its affiliates (collectively, the Berkshire MBR Sellers) in Washington, DC. The purpose of the meeting is to discuss matters related to the Commission's order issued in the above-captioned proceedings, pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (2012), instituting an investigation concerning the justness and reasonableness of the Berkshire MBR Sellers' market-based rate authorities in the PacifiCorp-East, PacifiCorp-West, Idaho Power Company, and NorthWestern balancing authority areas. *Nevada Power Company,* 149 FERC ¶ 61,219 (2014). The meeting will begin at 10 a.m. at the Federal Energy Regulatory Commission headquarters building located at 888 First Street NE., Washington, DC 20426. All interested parties are invited to observe the meeting in person or to listen to the meeting by telephone. For further information please contact Byron Corum at 202–502–6555.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Dated: January 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–01734 Filed 1–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13994–002]

Public Utility District No. 1 of Snohomish County; Notice of Technical Meeting

a. *Project Name and Number:* Hancock Creek Hydroelectric Project No. 13994.

b. *Date and Time of Meeting:* February 5, 2015; 3:30 p.m. Eastern Time (12:30 p.m. Pacific Time).

c. *Place:* Telephone conference with the U.S. Fish and Wildlife Service (FWS) and the Public Utility District No. 1 of Snohomish County (Snohomish PUD).

d. *FERC Contact:* Kelly Wolcott, *kelly.wolcott@ferc.gov* or (202) 502–6480.

e. *Purpose of Meeting:* To discuss the endangered species consultation under section 7 of the Endangered Species Act relative to the northern spotted owl; specifically, whether Snohomish PUD's comments on the environmental assessment and the Commission's recommendation for blasting restrictions to protect the northern spotted owl require additional consultation with FWS. Discussion pertaining to this topic will be limited to Commission staff, Snohomish PUD, and FWS. Other participants may listen in and provide any germane information related to this topic.

f. A summary of the meeting will be prepared and placed in the project's record.

g. All local, State, and Federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please contact Kelly Wolcott at *kelly.wolcott@ferc.gov* or (202) 502–6480 by close of business Tuesday, February 2, 2015, to RSVP and to receive specific instructions on how to participate.

Dated: January 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–01729 Filed 1–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF15–1–000]

PennEast Pipeline Company, LLC; Notice of Postponement of Public Scoping Meeting for the Penneast Pipeline Project

On January 13, 2015, the Federal Energy Regulatory Commission (FERC or Commission) issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned PennEast Pipeline Project, Requests for Comments on Environmental Issues, and Notice of Public Scoping Meetings.* The notice solicited comments on the potential environmental impacts of the planned project and announced the time and location of five public scoping meetings being held for the environmental proceedings.

Due to unforeseen circumstances, Commission staff is postponing the scoping meeting planned for Tuesday, January 27, 2015 at the Kendall Hall, Performance Theater, College of New Jersey, 2000 Pennington Road, Ewing, NJ 08628. Once a new venue is established and scheduled, the Commission will issue another notice advising of the new location and time.

Dated: January 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–01733 Filed 1–29–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the New York Independent System Operator, Inc.

The New York Independent System Operator, Inc. Management Committee Meeting

January 28, 2015, 10 a.m.–11:35 a.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=mc.*

The New York Independent System Operator, Inc. Electric System Planning Working Group Meeting

February 3, 2015, 10 a.m.–4 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/markets_operations/services/planning/index.jsp.*

The New York Independent System Operator, Inc. Business Issues Committee Meeting

February 11, 2015, 10 a.m.–4 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=bic.*

The New York Independent System Operator, Inc. Operating Committee Meeting

February 13, 2015, 10 a.m.–4 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=oc.*

The New York Independent System Operator, Inc. Management Committee Meeting

February 25, 2015, 10 a.m.–4 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=mc.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket Nos. ER13–102, ER13–1942, ER13–1946, New York Independent System Operator, Inc. and New York Transmission Owners

Docket No. ER13–1926, PJM Transmission Owners

Docket No. ER13–1947, PJM Interconnection, L.L.C.

Docket No. ER13–1957, ISO New England Inc.

Docket No. ER13–1960, ISO New England Inc., the Participating Transmission Owners Administrative Committee, and the New England Power Pool Participants Committee

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: January 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–01735 Filed 1–29–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0971; FRL—9922–28–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Aerosol Coatings (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''National Volatile Organic Compound Emission Standards for Aerosol Coatings'' (EPA ICR No. 2289.03, OMB Control No. 2060–0617) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through January 31, 2015. Public comments were previously requested via the **Federal Register** (79 FR 55449) on September 16, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of

information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 2, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2006–0971, to (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ms. Kaye Whitfield, Sector Policies and Programs Division (Mail Code D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2509; fax number: (919) 541–5450; email address: *whitfield.kaye@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The EPA is required under section 183(e) of the Clean Air Act (CAA) to regulate volatile organic compound (VOC) emissions from the use of consumer and commercial products. Pursuant to CAA section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Aerosol coatings are included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart E. The reports required under the standards enable the EPA to identify coating formulations manufactured, imported or distributed in the United States, and to determine the product-weighted reactivity. The ICR addresses the burden for activities conducted in 3-year increments after promulgation of the national VOC emission standards for aerosol coatings. Regulated entities read instructions to determine how they are affected by the rule. They are required to submit initial notifications when an aerosol coating is manufactured and notification of changes in the initial report, to report formulation data and exemptions claimed and to maintain records. In addition, regulated entities are required to submit triennial reports that include formulation data and VOC usage.

Form Numbers: None.

Respondents/affected entities: Manufacturers, distributors and importers of aerosol coatings.

Respondent's obligation to respond: Mandatory under 40 CFR part 59, subpart E.

Estimated number of respondents: 64 (total).

Frequency of response: Annual, triennial.

Total estimated burden: 12,265 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,033,626 (per year), includes no annualized capital or operation & maintenance costs.

Changes in the estimates: There is no change in hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–01771 Filed 1–29–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2014–0766; FRL–9919–43]

Draft Test Guidelines; Endocrine Disruptor Screening Program Test Guidelines (Series 890); Three Tier 2 Non-Mammalian Tests; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of three draft test guidelines for public review and comment that are being added to its 890 Series, entitled ''Endocrine Disruptor Screening Program Test Guidelines.'' The draft guidelines relate to the following three non-mammalian species tests identified under Tier 2 of the Endocrine Disruptor Screening Program (EDSP): Japanese quail 2-generation reproduction test; Medaka extended 1-generation reproduction test; and Larval amphibian growth and development assay. These draft test guidelines are part of a series of test guidelines established by the Office of Chemical Safety and Pollution Prevention (OCSPP) for use in testing pesticides and chemical substances. The test guidelines serve as a compendium of accepted scientific methodologies and protocols that are intended to provide data to inform regulatory decisions. The test guidelines provide guidance for conducting the test, and are also used by EPA, the public, and companies that submit data to EPA.

DATES: Comments must be received on or before March 31, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0766, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Sharlene Matten, telephone number: (202) 564–0130, email address: *matten.sharlene@epa.gov;* or Steven Knott, telephone number: (202) 564–0103, email address: *knott.steven@epa.gov.* Mailing address: Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is announcing the availability of three draft test guidelines for public review and comment that are being added to its 890 Series, entitled ''Endocrine Disruptor Screening Program Test Guidelines.'' The draft guidelines relate to the following three non-mammalian species tests identified under Tier 2 of the EDSP: Japanese quail 2-generation reproduction test; Medaka

extended 1-generation reproduction test; and Larval amphibian growth and development assay.

These draft test guidelines are part of a series of test guidelines established by OCSPP for use in testing pesticides and chemical substances to develop data for submission to the Agency under the Federal Food, Drug and Cosmetic (FFDCA) section 408 (21 U.S.C. 346a), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*), and the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*). The test guidelines serve as a compendium of accepted scientific methodologies and protocols that are intended to provide data to inform regulatory decisions under TSCA, FIFRA, and/or FFDCA.

The test guidelines provide guidance for conducting the test, and are also used by EPA, the public, and companies that are subject to data submission requirements under TSCA, FIFRA, and/or FFDCA. As guidance documents, the test guidelines are not binding on either EPA or any outside parties, and EPA may depart from the test guidelines where circumstances warrant and without prior notice. At places in this guidance, the Agency uses the word ''should.'' In this guidance, use of ''should'' with regard to an action means that the action is recommended rather than mandatory. The procedures contained in the test guidelines are recommended for generating the data that are the subject of the test guideline, but EPA recognizes that departures may be appropriate in specific situations. You may propose alternatives to the recommendations described in the test guidelines, and the Agency will assess them for appropriateness on a case-by-case basis.

II. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of pesticides and chemical substances for submission to EPA under TSCA, FIFRA, and/or FFDCA, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

III. Overview

A. What is the EDSP?

The EDSP is established under FFDCA section 408(p), which requires EPA to develop a chemical substance screening program using appropriate validated test systems and other scientifically relevant information to determine whether certain chemical substances may have hormonal effects. The EDSP consists of a two-tiered approach to screen chemical substances for potential endocrine disrupting effects. The purpose of Tier 1 screening is to identify chemical substances that have the potential to interact with the estrogen, androgen, or thyroid hormone systems using a battery of assays. Chemical substances that have the potential to interact with the estrogen, androgen or thyroid systems may proceed to Tier 2 testing, which is designed to identify any adverse endocrine-related effects caused by the chemical substance, and to establish a quantitative relationship between the dose and that endocrine effect. Additional information about the EDSP is available at *http://www.epa.gov/endo.*

1. *Tests considered for EDSP Tier 2.* In the December 1998 EDSP Policy Statement (Ref. 1), the Agency explained that the purpose of the testing stage (Tier 2) is to characterize the likelihood, nature, and dose-response relationship of any estrogen-, androgen-, and thyroid-related effects caused by a chemical substance in humans or wildlife. At that time, EPA identified the following non-mammalian tests under Tier 2 of EDSP: Amphibian reproduction and developmental toxicity, avian reproduction, fish reproduction, and invertebrate reproduction.

EPA followed the general validation principles of the Organization for Economic Co-Operation and Development (OECD) and the Intergovernmental Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) in the development of the four non-mammalian Tier 2 tests. In June 2013, the FIFRA Scientific Advisory Panel (SAP), a Federal advisory committee chartered under the Federal Advisory Committee Act (5 U.S.C. Appendix), reviewed draft protocols and supporting data for the four non-mammalian Tier 2 tests (Ref. 2): Japanese quail 2-generation toxicity test; Medaka extended 1-generation reproduction test; Larval amphibian growth and development assay; and mysid 2-generation toxicity test.

2. *Status of the mysid 2-generation toxicity test.* Although the mysid 2-generation toxicity test was generally supported by the FIFRA SAP, the data were not considered fully reliable across all endpoints and the results were not repeatable across laboratories without recommended improvements (Ref. 2). The FIFRA SAP and public commenters also stated that endpoints in the mysid 2-generation toxicity test are also provided to a large extent by the current mysid chronic life cycle test (Ref. 3), a test used effectively to assess the risk of chemical substances that may disrupt invertebrate growth, development, and reproduction, such as, insect growth regulators that disrupt development mediated by invertebrate hormones (Ref. 2). While concerns were expressed for certain aspects of the mysid 2-generation toxicity test, there were advancements in other features of the assay, particularly regarding culturing conditions and control performance.

Based on all of these factors, the Agency intends to consider and potentially incorporate, as appropriate, test design features from the mysid 2-generation toxicity test when updating and finalizing the existing draft mysid chronic life cycle test guideline (Ref. 4) assessing development, growth, reproductive, and toxicity endpoints. This may include the option of extending the mysid chronic life cycle test to a second generation. Expansion of the mysid chronic life cycle test was one of the Agency's options discussed in the December 1998 EDSP Policy Statement (Ref. 1). The existing OCSPP Test Guideline 850.1350 is intended to meet current and future testing requirements for data submitted to EPA under FFDCA, FIFRA, and TSCA (Ref. 4).

B. How were the draft test guidelines developed?

The FIFRA SAP supported the scientific rationale and purpose,

representative species chosen, biological and toxicological relevance of the major endpoints selected and measured, and the validation process used by EPA for all four Tier 2 non-mammalian tests (Ref. 2). Based on the FIFRA SAP's recommendations and public comments received, the EPA revised the test protocols (Ref. 3) and developed draft test guidelines for the following three tests: Japanese quail 2-generation toxicity test, Medaka extended 1-generation reproduction test, and Larval amphibian growth and development assay.

- The Japanese quail 2-generation reproduction test features a number of core apical endpoints related to survival, growth, reproduction and, potentially, behavior, as well as more pathway-specific endpoints (*e.g.,* histopathology). See draft OCSPP Test Guideline 890.2100, entitled ''Endocrine Disruptor Screening Program Test Guidelines; Avian Two-generation Toxicity Test in the Japanese Quail.''
- The Medaka extended 1-generation reproduction test, developed and evaluated primarily by scientists from the United States and Japan, starts with F0 adults, proceeds through the entire F1 generation, and provides an option for an entire life cycle exposure of the F2 generation. The test, which features both pathway-specific (*e.g.,* histopathology) and apical (*e.g.,* growth, reproduction) endpoints, has been successfully evaluated using several chemical substances expected to have different effects on the hypothalamic-pituitary-gonadal (HPG) axis. See draft OCSPP Test Guideline 890.2200, entitled ''Endocrine Disruptor Screening Program Test Guidelines; Medaka Extended One Generation Reproduction Test (MEOGRT).''
- The Larval amphibian growth and development assay is designed to assess possible risks of both HPG- and hypothalamic-pituitary-thyroid (HPT)-active toxicants. The assay, which was also developed through a joint effort between the United States and Japan, is initiated with Nieuwkoop-Faber (NF) stage 8 embryos and proceeds through NF stage 62 (complete metamorphosis). The amphibian test considers a variety of both apical and more pathway-specific endpoints. See draft OCSPP Test Guideline 890.2300, entitled ''Endocrine Disruptor Screening Program Test Guidelines; Larval Amphibian Growth and Development Assay (LAGDA).''

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Endocrine Disruptor Screening Program; Proposed Statement of Policy; Notice. **Federal Register** (63 FR 71542, December 28, 1998) (FRL–6052–9).
2. FIFRA SAP. SAP Minutes No. 2013–04. A Set of Scientific Issues Being Considered by the Environmental Protection Agency Regarding: Proposed Endocrine Disruptor Screening Program (EDSP) Tier 2 Ecotoxicity Tests, June 25–28, 2013. 2013. Docket ID No. EPA–HQ–OPP–2013–0182–0084.
3. EPA. Summary of EPA's Responses to Recommendations of the June 25–28, 2013 FIFRA SAP Regarding Proposed EDSP Tier 2 Non-Mammalian Tests. 2014.
4. EPA. OCSPP Harmonized Ecological Effects Test Guideline 850.1350 (Public Draft): Mysid Chronic Toxicity Test, April 1996. EPA 712–C–96–166. 1996. Docket ID No. EPA–HQ–OPPT–2009–0154.

Authority: 7 U.S.C. 136 *et seq.;* 15 U.S.C. 2601 *et seq.;* 21 U.S.C. 346a.

Dated: December 23, 2014.

Louise P. Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015–01836 Filed 1–29–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9019–3]

Environmental Impact Statements; Notice of Availability

AGENCY: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 01/19/2015 Through 01/23/2015 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20150019, Draft EIS, USACE, NC, Town of Ocean Isle Beach Shoreline Management Project, Comment Period Ends: 03/09/2015, Contact: Tyler Crumbley 910–251–4170

EIS No. 20150020, Draft EIS, NOAA, 00, PROGRAMMATIC—Habitat Restoration Activities Implemented throughout the Coastal United States, Comment Period Ends: 03/20/2015, Contact: Frederick Sutter 301–427–8600

EIS No. 20150021, Final EIS, NMFS, 00, Recreational Red Snapper Sector Separation, Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, Review Period Ends: 03/02/2015, Contact: Roy Crabtree 727–824–5301

EIS No. 20150022, Draft Supplement, BOEM, 00, Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales 2016 and 2017, Central Planning Area Lease Sales 241 and 247; Eastern Planning Area Lease Sales 226, Comment Period Ends: 03/16/2015, Contact: Gary Goeke 504–736–3233

EIS No. 20150023, Final Supplement, USN, 00, Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar Systems, Review Period Ends: 03/02/2015, Contact: Cynthia Morgan 703–695–8266 EIS No. 20150024, Final EIS, FHWA, ME, I–395/Route 9 Transportation System, Review Period Ends: 03/02/2015, Contact: Mark Hasselmann 207–512–4913

EIS No. 20150025, Final EIS, FERC, 00, Algonquin Incremental Market Project, Review Period Ends: 03/02/2015, Contact: Maggie Suter 202–502–6463

EIS No. 20150026, Final Supplement, USFS, WY, Long Term Special Use Authorization for Wyoming Game and Fish Commission to Use National Forest System Lands for their Winter Elk Management Activities at Alkali Creek Feedground, Review Period Ends: 03/16/2015, Contact: Pam Bode 307–739–5513

Amended Notices

EIS No. 20140354, Draft EIS, USACE, FL, South Central Palm Beach Island Comprehensive Shoreline Stabilization Project, Comment Period Ends: 02/25/2015, Contact: Garett Lips 561–674–2421

Revision to FR Notice Published 12/12/2014; Extending Comment Period from 01/26/2015 to 2/25/2015

Dated: January 27, 2015.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–01802 Filed 1–29–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA–HQ–ORD–2013–0232; FRL–9922–21–ORD]

Draft Integrated Science Assessment for Oxides of Nitrogen—Health Criteria

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Comment Period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the draft document titled, ''Second External Review Draft Integrated Science Assessment for Oxides of Nitrogen—Health Criteria'' (EPA/600/R–13/005). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD) as part of the review of the primary (health-based) National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO_2). The Integrated Science Assessment (ISA), in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. EPA is developing a separate ISA and NAAQS review for the secondary (welfare-based) NAAQS for NO_2, in conjunction with a review of the secondary NAAQS for sulfur dioxide (78 FR 53452).

EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public (meeting date and location to be specified in a separate **Federal Register** notice). This draft document is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views. EPA will consider any public comments submitted in response to this notice when revising the document.

DATES: The 60-day public comment period begins January 30, 2015, and ends March 31, 2015. Comments must be received on or before March 31, 2015.

ADDRESSES: The ''Second External Review Draft Integrated Science Assessment for Oxides of Nitrogen—Health Criteria'' will be available primarily via the Internet on NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea* or the public docket at *http://www.regulations.gov*, Docket ID: EPA–HQ–ORD–2013–0232. A limited number of CD–ROM copies will be available. Contact Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov* to request a CD–ROM, and please provide your name, your mailing address, and the document title, ''Second External Review Draft Integrated Science Assessment for Oxides of Nitrogen—Health Criteria'' to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at EPA's Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information, contact Dr. Molini Patel, NCEA; telephone: 919–541–1492; facsimile: 919–541–1818; or email: *patel.molini@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants that, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. . . .'' Under section 109 of the Act, the EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also required to review and, if appropriate, revise the NAAQS, based on the revised air quality criteria (for more information on the NAAQS review process, see *http://www.epa.gov/ttn/naaqs/review.html*).

The oxides of nitrogen are one of six criteria pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an ISA (formerly called an Air Quality Criteria Document). The ISA, in conjunction with additional technical and policy assessments, provides the scientific basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The CASAC, an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of EPA's air quality criteria.

On February 10, 2012 (77 FR 7149), EPA formally initiated its current review of the air quality criteria for the health effects of oxides of nitrogen and the primary (health-based) NO_2 NAAQS, requesting the submission of recent scientific information on specified topics. EPA held a workshop on February 29 to March 1, 2012, to gather input from scientific experts, both internal and external to EPA, as well as from the public regarding key science and policy issues that will frame the review of the health effects of the oxides of nitrogen and the primary NO_2 NAAQS (77 FR 7149, February 10, 2012).

The discussions at this workshop guided the development of EPA's ''Draft Plan for Development of the Integrated Science Assessment for Nitrogen Oxides—Health Criteria,'' a draft ''Integrated Review Plan for the Primary NAAQS for Nitrogen Dioxide'' (EPA–452/R–14–003) (IRP), and initial draft materials for the development of the ISA. The draft plan for the development of the ISA was made available for public comment on May 3, 2013 (78 FR 26026), and was discussed by CASAC via a publicly accessible teleconference consultation on June 5, 2013 (78 FR 27234, May 9, 2013). On June 11, 2013, EPA held a workshop to discuss, with invited scientific experts, initial draft materials prepared for the development of the ISA (78 FR 27374, May 10, 2013). The draft IRP was made available in February 2014 for public comment and CASAC review (79 FR 7184, February 6, 2014). The IRP was reviewed by CASAC at a public meeting on March 12, 2014 (79 FR 8701, February 13, 2014). The final IRP was released in June 2014 (79 FR 36801, June 30, 2014), and is available at: *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_2012_pd.html.*

Comments on the draft plan for the ISA and discussion at the June 11, 2013, workshop guided development of the ''First External Review Draft Integrated Science Assessment for Oxides of Nitrogen—Health Criteria,'' which was released on November 22, 2013 (78 FR 70040), and is available at: *http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=259167.* The CASAC

review panel for the oxides of nitrogen met at a public meeting on March 12–13, 2014, to review the draft ISA along with the draft IRP (79 FR 8701, February 13, 2014). Subsequently, on June 10, 2014, the CASAC panel provided a consensus letter for their review to the Administrator of EPA (*http://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/15E4619D3CD3409A85257CF30069387D/$File/EPA-CASAC-14-002+unsigned.pdf*). The second external review draft ISA was developed with consideration of comments received from CASAC and the public on the first external review draft ISA and includes consideration of scientific studies published through August 2014. The second external review draft ISA will be discussed by CASAC at a public meeting. In addition to the public comment period announced in this notice, the public will have an opportunity to submit written and/or oral comments related to the second external review draft ISA to CASAC. A separate **Federal Register** notice will inform the public of the exact date and time of that CASAC meeting and of the procedures for public participation.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0232, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA's Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in EPA's Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. EPA's Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0232. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email 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. For additional information about EPA's public docket visit EPA's Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in EPA's Headquarters Docket Center.

Dated: January 20, 2015.

Gina Perovich,

Acting Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2015–01606 Filed 1–29–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9922–12–OGC]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), notice is hereby given of a proposed settlement agreement to address lawsuits filed by Cliffs Natural Resources Inc. (''Cliffs''), ArcelorMittal USA LLC (''ArcelorMittal''), the State of Michigan (collectively, the ''Petitioners'') in the United States Court of Appeals for the Eighth Circuit: *Cliffs Natural Resources Inc., et al.,* v. *EPA,* No. 13–1758 (and consolidated case Nos. 13–1761, 13–2126, 13–2129, 13–2130) and *Cliffs Natural Resources Inc., et al.,* v. *EPA,* No. 13–3573 (and consolidated case Nos. 13–3575, 14–1710, and 14–1712). Petitioners filed petitions for review challenging EPA's final rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; States of Minnesota and Michigan; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze'' 78 FR 8706 (Feb. 6, 2013) (the ''FIP Rule''). Petitioners also filed petitions for review challenging EPA's final rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; States of Michigan and Minnesota; Regional Haze,'' 78 FR 59825 (Sept. 30, 2013) (the ''SIP Rule''). The proposed settlement agreement establishes deadlines for EPA to take actions.

DATES: Written comments on the proposed settlement agreement must be received by March 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2015–0003, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption,

and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Matthew C. Marks, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3276 fax number (202) 564–5603; email address: *marks.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The proposed settlement agreement will resolve lawsuits seeking review of EPA's final rules entitled ''Approval and Promulgation of Air Quality Implementation Plans; States of Minnesota and Michigan; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze'' 78 FR 8706 (Feb. 6, 2013) (the ''FIP Rule''), and EPA's final rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; States of Michigan and Minnesota; Regional Haze,'' 78 FR 59825 (Sept. 30, 2013) (the ''SIP Rule''). Petitioners have raised various challenges to the FIP Rule and the SIP Rule associated with taconite facilities located in Minnesota and Michigan.

The proposed settlement agreement states that, no later than June 12, 2015, EPA will sign a notice of proposed rulemaking proposing changes to the FIP Rule that are substantially consistent with, and include numeric emission limits and time frames identical to those set forth in, Attachment A to the Settlement Agreement. The proposed settlement agreement also states that, if EPA signs by December 18, 2015, a final rule amending the FIP Rule that is substantially consistent with, and includes numeric emission limits and time frames identical to those set forth in, Attachment A to the Settlement Agreement, then Petitioners and EPA shall promptly file an appropriate pleading for the dismissal of Case Nos. 13–1758, 13–1761, 13–2126, 13–2129, 13–2130, 13–3573, 13–3575, 14–1710, and 14–1712 with prejudice, with each party to bear its own costs and attorneys' fees. The proposed settlement agreement further states that Petitioners waive any right to challenge in any court or administrative proceeding any portion of that final rule that is substantially consistent with, and includes numeric emission limits and time frames identical to those set forth in, Attachment A to the Settlement Agreement. Finally, the proposed settlement agreement states that nothing in the agreement shall be construed to limit or modify the discretion accorded EPA by the Act or by general principles of administrative law.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2015–0003) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: January 22, 2015.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2015–01784 Filed 1–29–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0259]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

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 Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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 OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before March 31, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0259.

Title: Section 90.263, Substitution of Frequencies below 25 MHz.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and State, local or tribal government.

Number of Respondents and Responses: 5 respondents and 5 responses.

Estimated Time per Response: 30 minutes.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7) unless otherwise noted.

Total Annual Burden: 3 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Section 90.263 requires applicants proposing operations in certain frequency bands below 25 MHz to submit supplemental information showing such frequencies are necessary from a safety of life standpoint, and information regarding minimum necessary hours of operation.

This information will be used to evaluate the applicant's need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015–01819 Filed 1–29–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Downloadable Security Technology Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Downloadable Security Technology Advisory Committee (DSTAC) will hold its first meeting. At the meeting, the Committee will discuss;) the scope of the report that it will deliver to the Commission; the ultimate goals of interested parties with respect to navigation device conditional access and content security; recommended working groups and the tasks for which they will be responsible, and any other topics related to the DSTAC's work that may arise.

DATES: February 17, 2015.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–1573 or Nancy Murphy, *Nancy.Murphy@fcc.gov,* of the Media Bureau, (202) 418–1043.

SUPPLEMENTARY INFORMATION: The meeting will be held on February 17, 2015, from 10:00 a.m. to 3:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554.

The DSTAC is a Federal Advisory Committee that will ''identify, report, and recommend performance objectives, technical capabilities, and technical standards of a not unduly burdensome, uniform, and technology- and platform-neutral software-based downloadable security system.'' On December 8, 2014, the FCC, pursuant to the Federal Advisory Committee Act, established the charter for the DSTAC.

The meeting on February 17, 2015, will be the first meeting of the DSTAC. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Brendan Murray, DSTAC Designated Federal Officer, by email to *DSTAC@fcc.gov* or by U.S. Postal Service Mail to 445 12th Street SW., Room 4–A726, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the

Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

[FR Doc. 2015–01811 Filed 1–29–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice: Cancellation of Meeting Notice

January 28, 2015.

The following Commission meeting has been cancelled. No earlier announcement of the cancellation was possible.

TIME AND DATE: 2:00 p.m., Thursday, January 29, 2015.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Closed.

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session: *Brody Mining, LLC* v. *Secretary of Labor,* Docket Nos. WEVA 2014–82–R, et al. (Issues include whether to grant the Secretary of Labor's Emergency Motion for Stay of ALJ's Order Dismissing Pattern-of-Violations Notice.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2015–01921 Filed 1–28–15; 4:15 pm]

BILLING CODE 6735–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–1019]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, 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. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

Integrating Community Pharmacists and Clinical Sites for Patient-Centered HIV Care (OMB No. 0920–1019, expires 05/31/2017)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Medication Therapy Management (MTM) is a group of pharmacist provided services that is independent of, but can occur in conjunction with, provision of medication. MTM encompasses a broad range of professional activities and cognitive services within the licensed pharmacists' scope of practice and can include monitoring prescription filling patterns and timing of refills, checking for medication interactions, patient education, and monitoring of patient response to drug therapy.

HIV specific MTM programs have demonstrated success in improving HIV medication therapy adherence and persistence. While MTM programs have been shown to be effective in increasing medication adherence for HIV-infected persons, no MTM programs have been expanded to incorporate primary medical providers in an effort to establish patient-centered HIV care. To address this problem CDC has entered into a public-private partnership with Walgreen Company (a.k.a Walgreens pharmacies, a national retail pharmacy chain) to develop and implement a model of HIV care that integrates community pharmacists with primary medical providers for patient-centered HIV care. The model program will be implemented in ten sites and will provide patient-centered HIV care for approximately 1,000 persons.

The patient-centered HIV care model will include the core elements of MTM as well as additional services such as individualized medication adherence counseling, active monitoring of prescription refills and active collaboration between pharmacists and medical clinic providers to identify and resolve medication related treatment problems such as treatment effectiveness, adverse events and poor adherence. The expected outcomes of the model program are increased retention in HIV care, adherence to HIV medication therapy and viral load suppression.

On 16 May 2014, OMB approved the collection of standardized information from ten project sites over the three-year

project period and one retrospective data collection during the first year of the three-year project period. The retrospective data collection will provide information about clients' baseline characteristics prior to participation in the model program which is needed to compare outcomes before and after program implementation. Minor formatting revisions are requested to the previously approved data collection forms. Lastly, CDC newly requests approval to conduct key informant interviews with program clinic and pharmacy staff in order to evaluate the program processes and to collect time and cost data which will be used to estimate the cost of the model program. The key informant interviews and time and cost data are additional data collections from the original OMB approval.

Pharmacy, laboratory and medical data will be collected through abstraction of all participant clients' pharmacy and medical records. Pharmacy, laboratory and medical data are needed to monitor retention in care, adherence to therapy, viral load suppression and other health outcomes. Program specific data, such as the number of MTM elements completed per project site and time spent on program activities, will be collected by program. Qualitative data will be gathered from program staff through in-person or telephone interviews.

The data collection will allow CDC to conduct continuous program performance monitoring which includes identification of barriers to program implementation, solutions to those barriers, and documentation of client health outcomes. Performance monitoring will allow the model program to be adjusted, as needed, in order to develop a final implementation model that is self-sustaining and which can be used to establish similar collaborations in a variety of clinical settings. Collection of cost data will allow for the cost of the program to be estimated.

There is no cost to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Clinic Data Manager	Project clinic characteristics form	10	3	30/60	15
Pharmacist	Project pharmacy characteristics form	10	3	30/60	15
Clinic Data Manager	Patient Demographic Information form	10	100	5/60	83
Clinic Data Manager	Initial patient information form	10	100	1	1,000
Clinic Data Manager	Quarterly patient information form	10	400	30/60	2,000
Pharmacist	Pharmacy record abstraction form	10	400	30/60	2,000
Key informants	Interviewer data collection worksheet	60	2	30/60	60
Clinic staff	Clinic cost form	20	2	10	400
Pharmacy staff	Pharmacy cost form	20	2	10	400
Total					5,973

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–01698 Filed 1–29–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Notice of Charter Amendment

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has amended their charter to reflect the change in the filing date. The amended filing date is January 13, 2015.

For information, contact Dr. Larry Pickering, Designated Federal Officer, Advisory Committee on Immunization Practices, HHS, CDC, 1600 Clifton Road NE., Mailstop E05, Atlanta, Georgia 30333, telephone (404) 639–8562 or fax (404) 639–8626.

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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–01767 Filed 1–29–15; 8:45 am]

BILLING CODE 4163–18–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)

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:

Time and Date: 11:00 a.m.–12:30 p.m. EST, February 26, 2015.

Place: This meeting will be held by teleconference.

Status: This meeting is open to the public, limited only by the availability of telephone ports. The public is welcome to participate during the public comment, which is tentatively scheduled from 12:15 to 12:30 p.m. To participate in the teleconference, please dial (866) 763–0273 Passcode: 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 toward implementation of the Health Disparities Subcommittee recommendations and discussion of the Healthy People 2020 progress review on social determinants of health and LGBT health.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Leandris Liburd, Ph.D., M.P.H., M.A., Designated Federal Officer, Health Disparities Subcommittee, Advisory Committee to the Director, 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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2015–01766 Filed 1–29–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Occupational Safety and Health Education and Research Centers (ERC) PAR 10–217, initial review.

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 aforementioned meeting:

Times and Dates:

6:00 p.m.–8:00 p.m., February 23, 2015 (Closed).

8:00 a.m.–6:00 p.m., February 24, 2015 (Closed).

8:00 a.m.–6:00 p.m., February 25, 2015 (Closed).

8:00 a.m.–6:00 p.m., February 26, 2015 (Closed).

Place: Renaissance Atlanta Midtown Hotel, 866 West Peachtree Street NW., Atlanta, Georgia 30308, Telephone: (678) 412–2400.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Occupational Safety and Health Education and Research Centers (ERC) PAR 10–217.''

FOR FURTHER INFORMATION CONTACT: George Bockosh, M.S., Scientific Review Officer, National Institute for Occupational Safety and Health (NIOSH), CDC, 2400 Century Center Parkway NE., 4th Floor, Mailstop E–74, Atlanta, Georgia 30345, Telephone: (412) 386–6465, *GGB0@CDC.GOV* and Donald Blackman, Ph.D., Scientific Review Officer, NIOSH, CDC, 2400 Century Center Parkway NE., 4th Floor, Room 4204, Mailstop E–74, Atlanta, Georgia 30345, Telephone: (404) 498–6185, *DYB7@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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–01817 Filed 1–29–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns ''Comprehensive High-Impact HIV Prevention Projects for Community-Based Organizations'', Funding Opportunity Announcement (FOA) PS15–1502, initial review.

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 aforementioned meeting:

Times and Dates: 9:00 a.m.–4:00 p.m. EST, Panels 1–7; February 24, 2015 (Closed), 9:00 a.m.–4:00 p.m. EST, Panels 8–14; February 25, 2015 (Closed), 9:00 a.m.–4:00 p.m. EST, Panels 15–19; February 26, 2015 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Comprehensive High-Impact HIV Prevention Projects for Community-Based Organizations'' FOA PS15–1502.

Contact Person for More Information: Lisa R. Williams, Public Health Analyst, CDC, 1600 Clifton Road NE., Mailstop E07, Atlanta, Georgia 30333, Telephone: (404) 639–1877.

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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–01769 Filed 1–29–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

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) announce the following meeting of the aforementioned committee.

Times and Dates:

8:00 a.m.–5:45 p.m., February 25, 2015.

8:00 a.m.–1:00 p.m., February 26, 2015.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road NE., Building 19, Kent ''Oz'' Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate use of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines. Further, under provisions of the Affordable Care Act, at section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been adopted by the Director of the Centers for Disease Control and Prevention must be covered by applicable health plans.

Matters for discussion: The agenda will include discussions on: General recommendations; meningococcal vaccines; human papillomavirus vaccines; influenza;

novel influenza (H5N1) vaccines, tetanus, diphtheria, and acellular pertussis (Tdap) vaccine; hepatitis vaccines; new hexavalent vaccine work group; yellow fever vaccine; smallpox vaccine in laboratory personnel; and vaccine supply. Recommendation votes are scheduled for general recommendations, meningococcal vaccines, influenza, novel influenza H5N1 vaccine, yellow fever vaccine, smallpox vaccine, and human papillomavirus vaccines. Time will be available for public comment.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road NE., MS–A27, Atlanta, Georgia 30333, telephone 404/639–8836; Email *ACIP@CDC.GOV*.

Meeting is webcast live via the World Wide Web; for instructions and more information on ACIP please visit the ACIP Web site: *http://www.cdc.gov/vaccines/acip/index.html.*

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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–01818 Filed 1–29–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

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 for the aforementioned subcommittee:

Time and Date: 10:30 a.m.–5:00 p.m., Eastern Time, February 27, 2015.

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number is 1–866–659–0537 and the pass code is 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2015.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters for Discussion: The agenda for the Subcommittee meeting includes the following dose reconstruction program quality management and assurance activities: Discussion of current findings from NIOSH and Advisory Board dose reconstruction blind reviews; discussion of dose reconstruction cases under review including Pacific Proving Grounds, DuPont Deepwater Works, and cases from Sets 14–18; the Oak Ridge sites (Y–12, K–25, Oak Ridge National Laboratory, and Savannah River Site); plans for dose reconstruction case reviews; and preparation of the Advisory Board's next report to the Secretary, HHS, summarizing the results of completed dose reconstruction reviews. The agenda is subject to change as priorities dictate.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–01765 Filed 1–29–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns ''Epi-Centers for the Prevention of Healthcare-Associated Infections, Antimicrobial Resistance and Adverse Events-Multicenter Expansion of Current Investigation'', Funding Opportunity Announcement (FOA) CK11–0010501SUPP15, initial review.

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 aforementioned meeting:

Time and Date: 12:00 p.m.–4:00 p.m., February 23, 2015 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters For Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Epi-Centers for the Prevention of Healthcare-Associated Infections, Antimicrobial Resistance and Adverse Events-Multicenter Expansion of Current Investigation'', FOA CK11–0010501SUPP15''.

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833. 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.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–01768 Filed 1–29–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–R–306, CMS–10371, CMS–10392, CMS–10418, CMS–10472, CMS–10494 and CMS–10549]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 31, 2015.

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–306 Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities (PRTFs) for Individuals Under Age 21 and Supporting Regulations

CMS–10371 Cooperative Agreements to Support Establishment of State-Operated Health Insurance Exchanges

CMS–10392 Consumer Operated and Oriented (CO–OP) Program

CMS–10418 Annual MLR and Rebate Calculation Report and MLR Rebate Notices

CMS–10472 Exchange Functions: Standards for Navigators and Non-Navigator Assistance

CMS–10494 Standards for Navigators and Non-Navigator Assistance Personnel; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors

CMS–10549 Generic Clearance for Questionnaire Testing and Methodological Research for the Medicare Current Beneficiary Survey (MCBS)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities (PRTFs) for Individuals Under Age 21 and Supporting Regulations; *Use:* Psychiatric residential treatment facilities are required to report deaths, serious injuries and attempted suicides to the State Medicaid Agency and the Protection and Advocacy Organization. They are also required to provide residents the restraint and seclusion policy in writing, and to document in the residents' records all activities involving the use of restraint and seclusion. *Form Number:* CMS–R–306 (OMB Control Number 0938–0833); *Frequency:* Occasionally; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 390; *Total Annual Responses:* 1,466,795; *Total Annual Hours:* 431,062. (For policy questions regarding this collection contact Cindy Ruff at 410–786–5916).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Cooperative Agreements to Support Establishment of State-Operated Health Insurance Exchanges; *Use:* All States (including the 50 States, consortia of States, and the District of Columbia herein referred to as States) had the opportunity under Section 1311(b) of the Affordable Care to apply for three types of grants: (1) Planning grants; (2) Early Innovator grants for early development of information technology; and (3) Establishment grants to develop, implement and start-up Marketplaces. As of January 1st, 2015, the Secretary has disbursed over $5.4 billion under

this grant program and, as of that date, there were 79 active establishment grants awarded to 28 states. As the State-Based Marketplaces (SBM) and Small Business Health Options Program (SHOP) have matured and moved from the developmental phases to full-operation, the reporting requirements for the states have been modified and streamlined to insure only information necessary to provide effective oversight of their operations by CMS is collected. Given the innovative nature of Exchanges and the statutorily-prescribed relationship between the Secretary and States in their development and operation, it is critical that the Secretary work closely with States to provide necessary guidance and technical assistance to ensure that States can meet the prescribed timelines, federal requirements, and goals of the statute and the grants awarded to them. *Form Number:* CMS–10371 (OMB Control Number: 0938–1119); *Frequency:* Once; *Affected Public:* State Government agencies, non-profit entities; *Number of Respondents:* 28; *Number of Responses:* 48; *Total Annual Hours:* 31,404. (For policy questions regarding this collection contact Dena Pushkin at 301–492–4342.)

3. *Type of Information Collection Request:* Revision of a currently approved information collection; *Title of Information Collection:* Consumer Operated and Oriented (CO–OP) Program; *Use:* The Consumer Operated and Oriented Plan (CO–OP) program was established by Section 1322 of the Affordable Care Act. This program provides for loans to establish at least one consumer-operated, qualified nonprofit health insurance issuer in each State. Issuers supported by the CO–OP program will offer at least one qualified health plan at the silver level of benefits and one at the gold level of benefits in the individual market State Health Benefit Exchanges (Exchanges). At least two-thirds of policies or contracts offered by a CO–OP will be open to individuals and small employers. Profits generated by the nonprofit CO–OPs will be used to lower premiums, improve benefits, improve the quality of health care delivered to their members, expand enrollment, or otherwise contribute to the stability of coverage offered by the CO–OP. By increasing competition in the health insurance market and operating with a strong consumer focus, the CO–OP program will provide consumers more choices, greater plan accountability, increased competition to lower prices, and better models of care, benefiting all consumers, not just CO–OP members.

The CO–OP program will provide nonprofits with loans to fund start-up costs and State reserve requirements, in the form of Start-up Loans and Solvency Loans. An applicant may apply for (1) joint Start-up and Solvency Loans; or (3) only a Solvency Loan. Planning Loans are intended to help loan recipients determine the feasibility of operating a CO–OP in a target market. Start-up Loans are intended to assist loan recipients with the many start-up costs associated with establishing a new health insurance issuer. Solvency Loans are intended to assist loan recipients with meeting the solvency requirements of States in which the applicant seeks to be licensed to issue qualified health plans. *Form Number:* CMS–10392 (OMB control number: 0938–1139); *Frequency:* Occasionally; *Affected Public:* Private sector (Not-for-profit institutions); *Number of Respondents:* 23; *Total Annual Responses:* 675; *Total Annual Hours:* 93,220. (For policy questions regarding this collection contact Deepti Loharikar 301–492–4126).

4. *Type of Information Collection Request:* Revision of a currently approved information collection; *Title of Information Collection:* Annual MLR and Rebate Calculation Report and MLR Rebate Notices; *Use:* Under Section 2718 of the Affordable Care Act and implementing regulation at 45 CFR part 158, a health insurance issuer (issuer) offering group or individual health insurance coverage must submit a report to the Secretary concerning the amount the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes and licensing and regulatory fees, the amount of earned premium, and beginning with the 2014 reporting year, the amounts related to the transitional reinsurance, risk adjustment, and risk corridors. An issuer must provide an annual rebate if the amount it spends on certain costs compared to its premium revenue (excluding Federal and States taxes and licensing and regulatory fees) does not meet a certain ratio, referred to as the medical loss ratio (MLR). An interim final rule (IFR) implementing the MLR was published on December 1, 2010 (75 FR 74865) and modified by technical corrections on December 30, 2010 (75 FR 82277), which added Part 158 to Title 45 of the Code of Federal Regulations. The IFR is effective January 1, 2011. A final rule regarding selected provisions of the IFR was published on December 7, 2011 (76 FR 76574, CMS–9998–FC) and an interim final rule regarding an issue not included in issuers' reporting obligations (disbursement of rebates by non-federal governmental plans) was also published December 7, 2011 (76 FR 76596, CMS–9998–IFC2). Both rules published on December 7, 2011 are effective January 1, 2012. Each issuer is required to submit annually MLR data, including information about any rebates it must provide, on a form prescribed by CMS, for each State in which the issuer conducts business. Each issuer is also required to provide a rebate notice to each policyholder that is owed a rebate and each subscriber of policyholders that are owed a rebate for any given MLR reporting year. Additionally, each issuer is required to maintain for a period of seven years all documents, records and other evidence that support the data included in each issuer's annual report to the Secretary. Under Section 1342 of the Patient Protection and Affordable Care Act and implementing regulation at 45 CFR part 153, issuers of qualified health plans (QHPs) must participate in a risk corridors program. A QHP issuer is required to pay charges to or receive payments from CMS based on the ratio of the issuer's allowable costs to the target amount. A final rule (Premium Stabilization Rule) implementing the risk corridors program was published on March 23, 2012 (77 FR 17220), which added Part 153 to Title 45 of the Code of Federal Regulations. The Premium Stabilization Rule is effective May 22, 2012. Final rules (2014 and 2015 Payment Notices) outlining the risk corridors benefit and payment parameters for the 2014 and 2015 benefit years were published on March 11, 2013 (78 FR 15410) and March 11, 2014 (79 FR 13744), respectively. The 2014 and 2015 Payment Notices are effective April 30, 2013 and May 12, 2014, respectively. Each QHP issuer is required to submit an annual report to CMS concerning the issuer's allowable costs, allowable administrative costs, and the amount of premium.

Based upon our experience in the MLR data collection and evaluation process, we are updating its annual burden hour estimates to reflect the actual numbers of submissions, rebates and rebate notices. In addition, we are updating its annual burden hour estimates to reflect the additional burden (published in the 2015 Payment Notice) related to the risk corridors data submission requirements.

The 2014 MLR Reporting Form and instructions reflect changes for the 2014 reporting year and beyond that are set forth in the March 2013 update to 45 CFR part 158 regarding the MLR reporting and rebate distribution deadlines and the accounting for the transitional reinsurance, risk

adjustment, and risk corridors. The 2014 MLR Reporting Form and instructions are also modified to include the reporting elements required under the risk corridors data submission requirements in 45 CFR 153.530. In 2015, it is expected that issuers will send fewer notices and rebate checks to policyholders and subscribers, which will reduce burden on issuers. On the other hand, the requirement to report the risk corridors data will increase burden for QHP issuers. It is estimated that there will be a net reduction in total burden from 294,911 to 271,600. *Form Number:* CMS–10418 (OMB control number: 0938–1164); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 517; *Number of Responses:* 3,307; *Total Annual Hours:* 271,600. (For policy questions regarding this collection, contact Julie McCune at (301) 492–4196.)

5. *Type of Information Collection Request:* Revision of a previously approved information collection; *Title of Information Collection:* Patient Protection and Affordable Care Act; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors; Exchange and Insurance Market Standards for 2015; *Use:* Section 1321(a)(1) of the Affordable Care Act directs and authorizes the Secretary to issue regulations setting standards for meeting the requirements under title I of the Affordable Care Act, with respect to, among other things, the establishment and operation of Exchanges. Pursuant to this authority, regulations have been finalized at 45 CFR 155.215(b)(1) to require Navigators, as well as those non-Navigator personnel to whom 45 CFR 155.215 applies, requires completion of HHS approved training for initial certification and annual recertification prior to providing application and enrollment assistance. The training will include an optional training quality questionnaire providing Navigators and non-Navigator assistance personnel to whom 45 CFR 155.215 applies, an opportunity to provide feedback to CMS regarding the training and any improvements that can be made in the future. *Form Number:* CMS–10472 (OMB Control Number: 0938–1220); *Frequency:* On Occasion; *Affected Public:* State, Local, or Tribal Governments, Private Sector (not-for-profit institutions); individuals or households; *Number of Respondents:* 5,610; *Number of Responses:* 5,610; *Total Annual Hours:* 37,036. (For policy questions regarding this collection, contact Heather Raeburn at 301–492–4224.)

6. *Type of Information Collection Request:* Revision of a previously approved information collection; *Title of Information Collection:* Patient Protection and Affordable Care Act; Consumer Assistance Tools and Programs of an Exchange and Certified Application Counselors; Exchange and Insurance Market Standards for 2015; *Use:* Section 1321(a)(1) of the Affordable Care Act directs and authorizes the Secretary to issue regulations setting standards for meeting the requirements under title I of the Affordable Care Act, with respect to, among other things, the establishment and operation of Exchanges. Pursuant to this authority, regulations establishing the certified application counselor program have been finalized at 45 CFR 155.225. In accordance with 155.225(d)(1) and (7), certified application counselors in all Exchanges are required to be initially certified and recertified on at least an annual basis and successfully complete Exchange-required training. *Form Number:* CMS–10494 (OMB Control Number: 0938–1205); *Frequency:* On Occasion; *Affected Public:* State, Local, or Tribal Governments, Private Sector (Not-for-profit institutions); Individuals or Households; *Number of Respondents:* 30,000; *Number of Responses:* 30,000; *Total Annual Hours:* 7,500. (For policy questions regarding this collection, contact Tricia Beckmann at 301–492–4328.)

7. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Generic Clearance for Questionnaire Testing and Methodological Research for the Medicare Current Beneficiary Survey (MCBS); *Use:* The purpose of this OMB clearance package is to clear a Generic Clearance to support an effort to evaluate the operations and content of the Medicare Current Beneficiary Survey (MCBS). The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged, disabled, and institutionalized Medicare beneficiaries. The MCBS, which is sponsored by the Centers for Medicare & Medicaid Services (CMS), is the only comprehensive source of information on the health status, health care use and expenditures, health insurance coverage, and socioeconomic and demographic characteristics of the entire spectrum of Medicare beneficiaries.

The core of the MCBS is a series of interviews with a stratified random sample of the Medicare population, including aged and disabled enrollees, residing in the community or in institutions. Questions are asked about enrollees' patterns of health care use, charges, insurance coverage, and payments over time. Respondents are asked about their sources of health care coverage and payment, their demographic characteristics, their health and work history, and their family living circumstances. In addition to collecting information through the core questionnaire, the MCBS collects information on special topics through supplements. For example, questions are asked about enrollees' income and assets, access to health care, health and functional status and satisfaction with care. Special supplements also focus on emerging trends in health care. *Form Number:* CMS–10549 (OMB control number 0938–New); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours:* 1,117. (For policy questions regarding this collection contact William Long at 410–786–7927.)

Dated: January 27, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–01790 Filed 1–29–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10530, CMS–1880 and CMS–1882]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the

following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 2, 2015.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Ambulatory Surgical Center Quality Reporting Program; *Use:* Our quality reporting programs promote higher quality, more efficient health care for Medicare beneficiaries. We have implemented quality measure reporting programs for multiple settings, including for ambulatory surgical centers. Section 109(b) of the Tax Relief and Health Care Act of 2006 (TRHCA) (Pub. L. 109–432) amended section 1833(i) of the Act by re-designating clause (iv) as clause (v) and adding new clause (iv) to paragraph (2)(D) and by adding new paragraph (7). Section 1833(i)(2)(D)(iv) of the Act authorizes, but does not require, the Secretary to implement the revised ASC payment system ''in a manner so as to provide for a reduction in any annual update for failure to report on quality measures in accordance with paragraph (7).'' Section 1833(i)(7)(A) of the Act states that the Secretary may provide that any ASC that does not submit quality measures to the Secretary in accordance with paragraph (7) will incur a 2.0 percentage point reduction to any annual increase provided under the revised ASC payment system for such year. Sections 1833(t)(17)(C)(i) and (ii) of the Act require the Secretary to develop measures appropriate for the measurement of the quality of care furnished in outpatient settings.

Section 3014 of the Affordable Care Act of 2010 (ACA) modified section 1890(b) of the Social Security Act to require CMS to develop quality and efficiency measures through a ''consensus-based entity''. To fulfill this requirement, the Measure Applications Partnership (MAP) was formed to review measures consistent with these requirements. The MAP is convened by the National Quality Forum (NQF), a national consensus organization. In implementing this and other quality reporting programs, our overarching goal is to support the National Quality Strategy's goals of better health for individuals, better health for populations, and lower costs for health care.

This information is used to direct contractors, including Quality Improvement Organizations (QIOs), to focus on particular areas of improvement, and to develop quality improvement initiatives. The information is made available to ASCs for their use in internal quality improvement initiatives. Most importantly, this information is available to Medicare beneficiaries, as well as to the general public, to provide information to assist them in making decisions about their health care. *Form Number:* CMS–10530 (OMB control number: 0938–NEW); *Frequency:* Annually; *Affected Public:* Private sector (business or other for-profits and not-for-profit institutions); *Number of Respondents:* 5,250; *Total Annual Responses:* 744,816; *Total Annual Hours:* 444,790. (For policy questions regarding this collection contact Anita Bhatia at 410–786–7236.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Certification as a Supplier of Portable X-Ray and Portable X-Ray Survey Report Form and Supporting Regulations; *Use:* CMS–1880 is initially completed by suppliers of portable X-ray services, expressing an interest in and requesting participation in the Medicare program. This form initiates the process of obtaining a decision as to whether the conditions of coverage are met as a portable X-ray supplier. It also promotes data reduction or introduction to, and retrieval from, the Certification and Survey Provider Enhanced Reporting (CASPER) by the CMS Regional Offices (ROs).

The CMS–1882 is used by the State survey agency to provide data collected during an on-site survey of a supplier of portable X-ray services to determine compliance with the applicable conditions of participation and to report this information to the Federal Government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the ASPEN system at the CMS Regional Offices. The form includes basic information on compliance (*i.e.,* met, not met, explanatory statements) and does not require any descriptive information regarding the survey activity itself. We have the responsibility and authority for certification decisions which are based on supplier compliance with the applicable conditions of participation. The information needed to make these decisions is available to us only through the use of information abstracted from the survey report form. *Form Numbers:* CMS–1880 and CMS–1882 (OMB control number: 0938–0027); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 579; *Total Annual Responses:* 86; *Total Annual Hours:* 151. (For policy questions regarding this collection contact James Cowher at 410–786–1948.)

Dated: January 27, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–01777 Filed 1–29–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for States/Territories for FFY 2016–2018 (ACF–118).

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories is required from each CCDF Lead agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990, (CCDBG Act), as amended, CCDBG Act of 2014 (Pub. L. 113–186), and 42 U.S.C 9858. The Plan provides ACF and the public with a description of, and assurance about, the States' and Territories' child care programs. States must submit Plans to ACF on July 1, 2015 for approval in order to receive funding on October 1, 2015 for FY 2016.

The Office of Child Care (OCC) has revised the FY 2016–2018 Plan to align with the new program requirements made under the CCDBG Act of 2014, which was signed into law on November 19, 2014. The revised Plan (ACF–118) has been organized into eight critical areas:

- Define CCDF Leadership and Coordination with Relevant Systems
- Promote Family Engagement through Outreach and Consumer Education
- Provide Stable Child Care Financial Assistance to Families
- Ensure Equal Access to High Quality Child Care for Children in Low-Income Families
- Establish Standards and Monitoring Processes to Ensure the Health and Safety of Child Care Settings
- Recruit and Retain a Qualified and Effective Child Care Workforce
- Support Continuous Quality Improvement
- Ensure Grantee Accountability

In making the revisions, consideration was given to minimize the burden of the collection of information on respondents. The Plan, submitted on the ACF–118, is now required triennially, and will remain in effect for three years.

Due to the pending outcome of the CCDBG reauthorization bill, which was introduced in September and signed into law in November, the Office of Child Care (OCC) was unable to complete the regular Paperwork Reduction Act clearance process that calls for two **Federal Register** notices and comment periods. Given that OCC must consult with the CCDF administrators and the general public, and the limited amount of time before the States and Territories must submit their plans to ACF (July 1, 2015), the Office of Management and Budget (OMB) has granted OCC an emergency clearance of the FY 2016–2018 CCDF State/Territory Plan Preprint. This emergency clearance provides for a single 30-day comment period. Consistent with the statute and regulations, ACF requests revision of the ACF–118 to align with the requirements of the CCDBG Act of 2014. The Tribal Plan (ACF–118a) will be addressed under a separate notice.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

Respondents: State and Territory CCDF Lead Agencies (56).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	0.50	162.50	4,550

Estimated Total Annual Burden Hours: 4,550.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–01723 Filed 1–29–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIAID Investigator Initiated Program Project Applications (P01).

Date: February 26, 2015.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 4F100, 5601 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Date: March 2, 2015.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 4F100, 5601 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Nancy Vazquez-Maldonado, Ph.D. Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS700B, 5601 Fishers Lane, Rockville, MD 20892, 240–669–5044 *nvazquez@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 26, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01715 Filed 1–29–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Societal and Ethical Issues in Research Study Section.

Date: February 18, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Karin F. Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–109: Mechanistic Insights from Birth Cohorts.

Date: February 25, 2015.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: March 2–3, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncological Sciences.

Date: March 2–3, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr. Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PARs: Developing and Testing Interventions for Health-Enhancing Physical Activity.

Date: March 2, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Orthopedic and Skeletal Biology.

Date: March 2, 2015.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biophysical, Physiological, Pharmacological and Bioengineering Neuroscience.

Date: March 2–3, 2015,

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott Hotel New Orleans, 614 Canal St., New Orleans, LA 70130.

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk, Prevention and Intervention for Addictions.

Date: March 2–3, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Research Project Grant.

Date: March 2, 2015.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gabriel B Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 26, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01719 Filed 1–29–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: March 4, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: NCI Update, Bypass Budget Discussion, Genomic Data Commons Project, NCRA Working Group Updates.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 11A01, Bethesda, MD 20892.

Go To: *https://cbiit.webex.com/cbiit/j.php?MTID=m6a771d2a3371a0ec88776ece383de4dc*

Meeting Password ——NCINCRa67!
Meeting Number ——734 746 765
AUDIO CONNECTION

1. Provide your number when you join the meeting to receive a call back. Alternatively, you can call one of the following numbers: Dial In Number: 1–240–276–6338
2. Follow the instructions that you hear on the phone. Your Cisco Unified Meeting Place meeting ID: 734 746 765

Contact Person: Kelley Landy, NCI Office of Advocacy Relations, National Cancer Institute, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, 301–496–9723, *Kelley.landy@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncra/ncra.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 26, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01720 Filed 1–29–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: February 26–27, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton—Silver Spring, Cypress Ballroom, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/NIAID, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892–7616, 240–669–6050, *james.snyder@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 26, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01717 Filed 1–29–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Development of Novel Therapeutics for Select Anaerobic Protozoa.

Date: February 24–25, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 9H200 A/B, 5601 Fishers Lane, Rockville, MD 20852.

Contact Person: Annie Walker-Abbey, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 26, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01716 Filed 1–29–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Health Disparities and Equity Promotion Study Section.

Date: February 26–27, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: February 27, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marines Memorial Club and Hotel, 609 Sutter Street, San Francisco, CA 94102.

Contact Person: Donald S Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: February 27, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Torrance Marriott South Bay, 3635 Fashion Way, Torrance, CA 90503.

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognition and Learning.

Date: February 27, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bone and Cartilage Biology and Tissue Engineering.

Date: February 27, 2015.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–0996, *ybi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Review: Immunology.

Date: February 27, 2015.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Patrick K Lai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 26, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01718 Filed 1–29–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Time-Sensitive Obesity Policy and Program Evaluation.

Date: February 23, 2015.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Renal Function Program Projects.

Date: February 24, 2015.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK PLUS–CC Review.

Date: March 5, 2015.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK PLUS—SDCC Review.

Date: March 5, 2015.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Adult Acute Liver Failure Study.

Date: March 5, 2015.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK PKD/P30.

Date: March 9, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Collaborative Interdisciplinary Team Science in NIDDK Research Areas.

Date: March 25, 2015.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 26, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–01714 Filed 1–29–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System (DIS) Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify part of the National Customs Automation Program (NCAP) test concerning document imaging, known as Phase III of the Document Image System (DIS) test. Phase III of the DIS test allows Automated Commercial Environment (ACE) participants to submit electronic images of a specific set of CBP and Partner Government Agency (PGA) forms and supporting information to CBP via a CBP-approved Electronic Data Interchange (EDI). This notice announces that ACE participating importers and brokers may now submit DIS test-supported Animal and Plant Health Inspection Service (APHIS) documents, in Portable Document Format (PDF) file format, via email, to *docs@cbp.dhs.gov.*

DATES: The modified DIS test will commence no earlier than February 17, 2015, and will continue until concluded by way of announcement in the **Federal Register**.

ADDRESSES: Comments concerning this notice and any aspect of the test may be submitted at any time during the test via email to Monica Crockett at *monica.v.crockett@cbp.dhs.gov.* In the subject line of your email, please indicate ''*Comment on Document Image System (DIS)*''.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Monica Crockett at *monica.v.crockett@cbp.dhs.gov.* For technical questions related to ABI transmissions, contact your assigned client representative. Any partner government agency (PGA) interested in participating in DIS should contact Elizabeth McQueen at *elizabeth.mcqueen@cbp.dhs.gov.* Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

This test notice, and the Customs related electronic functions it describes, are part of the National Customs Automation Program (NCAP). NCAP was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial focus of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the legacy Customs Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing. ACE will streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all its communities of interest. The ability to meet these objectives depends upon successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality, designed to introduce a new capability or to replace a specific legacy ACS function. Each release will begin with a test, and will end with mandatory compliance with the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases, and sets the foundation for subsequent releases. For the convenience of the public, all **Federal Register** publications detailing ACE test developments in Entry, Summary, Accounts, and Revenue (ESAR) are listed chronologically at the end of this notice, in the section ''*Development of ACE Prototypes.*''

One of the phased releases is for the Document Imaging System (DIS) feature, which allows participants to submit certain information electronically instead of submitting that information via a paper document. The DIS test allows ACE participants to submit electronic images of a specific set of CBP and Partner Government Agency (PGA) forms and supporting information to CBP. Specifically, importers and brokers are allowed to submit specified official CBP documents and specified PGA documents via a CBP-approved Electronic Data Interchange (EDI). The first phase of the DIS test, Phase I, enabled participating importers and brokers to transmit images of specified

CBP and PGA forms with supporting information via a CBP approved EDI in an Extensible Markup Language (XML) file format, in lieu of conventional paper methods. *See* 77 FR 20835 (April 6, 2012). In the second phase, Phase II, CBP reduced the number of metadata elements required for each document and specified forms that were eligible to be submitted earlier, *i.e.* at the time of manifest, or transmitted via a CBP-approved EDI to support ACE Cargo Release filings (previously known as Simplified Entry filings). In Phase II CBP also expanded the pool of eligible participants to include software providers, who only electronically transmit data that they had received for transmission to CBP. *See* 78 FR 44142 (July 23, 2013).

On June 25, 2014, CBP published in the **Federal Register** a notice announcing the third phase of the DIS test, Phase III, which added to the list of documents supported by the DIS test. *See* 79 FR 36083 (June 25, 2014). The DIS test supports certain PGA forms and supporting information, which include ones that the Animal and Plant Health Inspection Service (APHIS) requires. *See* 79 FR 36083 for the complete list of CBP and PGA documents, which the DIS test supports as of the date of this notice.

Pursuant to Phase III of the DIS test, parties who file entry summaries in ACE are allowed to submit specified CBP and PGA documents via a CBP-approved EDI. DIS capabilities will continue to be delivered in multiple phases.

CBP will continue to publish in the **Federal Register** announcements to notify ACE participants when they may submit any new CBP or PGA documents into the DIS test, or when they may send any other DIS test-supported documents via email in PDF file format. All other eligibility criteria, technical specifications, recordkeeping requirements, and rules for submitting to DIS, as specified in prior DIS test notices, remain the same. *See* 79 FR 36083.

Authorization for the Test

The Customs Modernization provisions in the North American Free Trade Agreement Implementation Act provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. This test is authorized pursuant to § 101.9(b) of the CBP Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

Modification of Phase III of the Document Image System (DIS) Test Program

This notice announces that, as an addition to Phase III, CBP is now allowing brokers and importers, who are also ACE participants, to file DIS test-supported APHIS documents, in Portable Document Format (PDF) file format, via email, to this email address: *docs@cbp.dhs.gov.*

The DIS test-supported APHIS documents, which ACE-participating brokers and importers may send in PDF file format to *docs@cbp.dhs.gov,* are:

- APHIS *STAT* Supporting Statement
- APHIS *Import Permit*
- APHIS Plant Protection and Quarantine (PPQ) Form 368, *Notice of Arrival* (of a restricted article at the port of entry)
- APHIS PPQ Form 203, *Foreign Site Certificate of Inspection and/or Treatment*
- APHIS PPQ Form 586, Application for *Permit to Transit Plants and/or Plant Products, Plant Pests, and/or Associated Soil through the United States*
- APHIS PPQ Form 587, Application for *Permit to Import Plants or Plant Products*
- APHIS *Transit Permit*
- Foreign Government Sanitary Certificate (Veterinary Health Certificate) (used by APHIS)
- Ingredients List (used by APHIS)
- Phytosanitary Certificates (used by APHIS)
- Proof of origin (for origin shipments of milk and milk products) (used by APHIS)

Test Participation

All other eligibility criteria, technical specifications, recordkeeping requirements, and rules for submitting to DIS remain the same. For more information about the eligibility criteria, technical specifications, recordkeeping requirements, and rules for submitting to DIS, *see* 79 FR 36083.

Development of ACE Prototypes

A chronological listing of **Federal Register** publications, which describe ESAR ACE test developments, is provided, below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and

Clarifications: 78 FR 69434 (November 19, 2013).

- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release To Allow Importers and Brokers To Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment Document Image System: 79 FR 36083 (June 25, 2014).
- eBond Test: 79 FR 70881 (November 28, 2014); 80 FR 899 (January 7, 2015).

Dated: January 27, 2015.

Brenda Smith,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2015–01822 Filed 1–29–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; Form No. G–146; Non-Immigrants Checkout Letter; OMB Control No. 1653–0020.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on November 5, 2014, Vol. 79 No. 26252 allowing for a 60 day comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved information collection.

(2) *Title of the Form/Collection:* Non-Immigrant Checkout Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form G–146); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. When an alien (other than one who is required to depart under safeguards) is granted the privilege of voluntary departure without the issuance of an Order to Show Cause, a control card is prepared. If, after a certain period of time, a verification of departure is not received, actions are taken to locate the alien or ascertain his or her whereabouts. Form G–146 is used to inquire of persons in the United States or abroad regarding the whereabouts of the alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.16 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,220 annual burden hours.

Dated: January 27, 2015.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2015–01764 Filed 1–29–15; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, With Change, of an Existing Information Collection; Comment Request.

ACTION: 60-Day Notice of Information Collection for Review; 10–002; Electronic Funds Transfer Waiver Request; OMB Control No. 1653–0043.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 31, 2015.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Scott Elmore, Forms

Management Office, U.S. Immigration and Customs Enforcement, 801 I Street NW., Mailstop 5800, Washington, DC 20536–5800; (202) 732–2601.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with change, of an existing information collection.

(2) *Title of the Form/Collection:* Electronic Funds Transfer Waiver Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form 10–002); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Section 404(b) of the Immigration and Nationality Act (8 U.S.C. 1101 note) provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency. This collection of information allows for State or local governments to request reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

Dated: January 27, 2015.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2015–01770 Filed 1–29–15; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–05]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Agriculture: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; COE: Ms. Brenda John-Turner, Army Corps of Engineers, Real Estate, HQUSACE/CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5222; Energy: Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave. SW., Washington, DC 20585 (202) 287–1503; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; Interior: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave. #104, Hollywood, FL. 33021; (443) 223–4639; NASA: Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202) 358–1124; Navy: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374, (202) 685–9426 (These are not toll-free numbers).

Dated: January 22, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 01/30/2015

Suitable/Available Properties

Building

California

31 Trailers
700 East Ave.
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201440007
Status: Excess
Directions: 1280; 1602; 1631; 1678; 1680; 1726; 1756; 1826; 1886; 1887; 2180; 2512; 2525; 2554; 2625; 2627; 2679; 2808; 2825; 2925; 3204; 3206; 3304; 4924; 5104; 5207; 5226; 6424; 6426; 8724; 8726
Comments: off-site removal only; 80,324 GSF; fair to adequate condition; contact DOE for accessibility & any further information regarding trailers.

Facility 20281
Naval Air Weapons Station
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77201510003
Status: Excess
Comments: off-site removal only; 346 sq. ft.; 20+ yrs.-old; short range air navigational aid; roof need to be replaced; contamination; contact Navy for more information.

Colorado

6 Bldgs. Grand Junction Complex
500 South 10th Street
Grand Junction CO 81501
Landholding Agency: GSA
Property Number: 54201510002
Status: Excess
GSA Number: 7–I–CO–0698–AA
Directions: Disposal Agency; GSA
Landholding Agency; Bureau of Reclamation
Comments: 50+ yrs. old; Brick/Metal structure; 11,244 sq. ft., total 6 bldgs.; sits on 1.2 acres; office/storage/warehouse; repairs needed totaling $10,000; contact GSA for more info.

Iowa

Pisgah Microwave Repeater Site
1585 Juneau Avenue
Mondamin IA 51564
Landholding Agency: GSA
Property Number: 54201510001
Status: Excess
GSA Number: 7–D–IA–0514–AA
Directions: Disposal Agency; GSA
Landholding Agency; COE
Comments: 26+ yrs. old; metal structure; 128 sq. ft., storage; property has radio antenna; sit on 2.58 acres of land; for further info. contact GSA.

Missouri

Former NMCB15 Richards-Gedaur
RPSUID 212
600 Seabee Drive
Belton MO 64068
Landholding Agency: GSA
Property Number: 54201510004
Status: Surplus
GSA Number: 7–D–MO–0705
Directions: Disposal Agency: GSA; Landholding Agency: Navy
Comments: 10 bldgs. ranging from 960 to 4,980 sq. ft.; 12+ months vacant; some recent use includes: admin./classroom/warehouse; 14.67 acres; asbestos/lead/mold may be present; contact GSA for more information.

Montana

Bldg. #2501; Jackson Oil House
1000 Warm Springs Rd.
Jackson MT 59736
Landholding Agency: Agriculture
Property Number: 15201510002
Status: Unutilized
Comments: 80+ yrs. old; storage; 180 months vacant; poor conditions; needs new foundation and floor; contact Agriculture for more info.

New York

Hector Grazing Association
Hdgt. House
5046 Rt. 1 Searsburg Road
Hector NY 14886
Landholding Agency: Agriculture
Property Number: 15201510001
Status: Unutilized
Comments: 125+ yrs. old; 1,000 sq. ft.; storage; residential; vacant 96 NOS; wood structure; repaired needed in 2006 totaled $89,000; contact Agric. For more info.

Oklahoma

Keystone Lake Office
23115 West Wekiwa Road
Sand Springs OK 74063–9312
Landholding Agency: COE
Property Number: 31201440009
Status: Unutilized
Directions: 43430; 43431; 43498; 43499
Comments: off-site removal only; no future agency need; 33 sq. ft.; poof conditions; contact COE for more information.

Texas

CESWF–OD–TB, Town Bluff Dam/
B. A. Steinhagen Lake
5171 FM 92 South
Woodville TX 75975
Landholding Agency: COE
Property Number: 31201510001
Status: Unutilized
Directions: Town Bluff Dam: TB–26110
Comments: 66+ yrs. old; 64 sq. ft.; well house pump + storage tank; wood frame on concrete slab; contact COE for more info.

Virginia

Marine Corps Reserve Training Facility
7401 Warwick Blvd.
Newport News VA
Landholding Agency: Navy
Property Number: 77201510001
Status: Unutilized
Comments: 31+ yrs. old; 21,157 sq. ft.; Marine Corps Reserve Center; contact Navy for more information.

Washington

old Lynden Border Patrol
Station; 8334 Guide Meridian Rd.
Lynden WA 98264
Landholding Agency: GSA
Property Number: 54201510003
Status: Excess
GSA Number: 9–Z–WA–1276
Directions: Disposal Agency: GSA; Landholding Agency: Dept. of Homeland Security
Comments: 50+ yrs. old; 2,763 sq. ft.; vacant 18+ months; contact GSA for more information.

Unsuitable Properties

Building

California

Bldg. 828B, 261, 281, 321A, 343
700 East Ave.
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201440005
Status: Excess
Directions: 828B; 261; 281; 321A; 343
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Building 405,435,442,812A, 812D
700 East Ave.
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201440006

Status: Excess
Directions: 405; 435; 442; 812A; 812D
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Bldg. 828A, 834J, 834L, 848,850
700 East Ave.
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201440008
Status: Excess
Directions: 828A; 834J; 834L; 848; 850
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Facility 01055
Naval Air Weapon Station
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77201510002
Status: Excess
Comments: public access denied and no alternative method to gain access w/out compromising national security; documented deficiencies: roof has crumbled; clear threat to physical safety.
Reasons: Secured Area; Extensive deterioration

Florida

2 Building
Naval Air Station
Pensacola FL 32509
Landholding Agency: Navy
Property Number: 77201440021
Status: Underutilized
Directions: 2402; 856A (property incorrectly listed in the December 12, 2014 **Federal Register** publication)
Comments: public access denied and no alternative w/out compromising national security.
Reasons: Secured Area

Illinois

Master Sub Station
Fermi National Accelerator Lab
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41201510001
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Nebraska

543800B060 Swine Bldg.
60/RPUID 03.55088
844 RD: 313
None NE 68933
Landholding Agency: Agriculture
Property Number: 15201510003
Status: Excess
Directions: 19606 HRUSKA US Meat Animal Res. Ctr.
Comments: research based camps; Public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

543800B062 Swine Bldg.
62/RPUID 03.55090
844 RD 313
None NE 68933
Landholding Agency: Agriculture
Property Number: 15201510004
Status: Excess
Directions: 19606 HRUSKA US meat Animal Res. Ctr
Comments: research based camps; Public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

543800B0061 Swine Bldg.
61/RPUID 03.55089
844 BD 313
None NE 68933
Landholding Agency: Agriculture
Property Number: 15201510005
Status: Excess
Directions: 19606 HRUSKA US Meat Animal Res. Ctr.
Comments: research based camps; Public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

New Mexico

Hammond Residence
790 C.R. 4990
Bloomfield NM 87413
Landholding Agency: Interior
Property Number: 61201440015
Status: Unutilized
Comments: documented deficiencies; structural unsound; roof is severely dry rotted; extensive wall damage due to dry rot/massive holes; clear threat to physical safety.
Reasons: Extensive deterioration

Building 114 & 437
12600 NASA Road
Las Cruces NM 88012
Landholding Agency: NASA
Property Number: 71201440017
Status: Unutilized
Directions: 114; 437
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

114 General Purpose Bldg. 437
12600 Nasa Road
Las Cruces NM 88012
Landholding Agency: NASA
Property Number: 71201510002
Status: Unutilized
Directions: 1029/72/22: 1069/72/99
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Ohio

SPE Water Toner (D)
6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: NASA
Property Number: 71201510001
Status: Unutilized
Directions: RPM Property 22/1008/57. Property Number #8151.
Comments: public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Unsuitable Properties

Land

Ohio

Great Miami River Access Site
Lawrenceburg Rd.
North Bend OH 45052
Landholding Agency: GSA
Property Number: 54201510005
Status: Excess
GSA Number: 1–D–OH–844
Directions: Disposal Agency: GSA; Landholding Agency: COE
Comments: entire property located within a floodway which has not been corrected or contained.
Reasons: Floodway

[FR Doc. 2015–01469 Filed 1–26–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5847–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2015, is 2 1/4 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2015, is 3 percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities

adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 2015, is 3 percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 3 percent for the 6-month period beginning January 1, 2015. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2015.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1986	Jan. 1. 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅝	Jan. 1, 1994	July 1, 1994
7¾	July 1, 1994	Jan. 1, 1995
8⅜	Jan. 1, 1995	July 1, 1995
7¼	July 1, 1995	Jan. 1, 1996
6½	Jan. 1, 1996	July 1, 1996
7¼	July 1, 1996	Jan. 1, 1997
6¾	Jan. 1, 1997	July 1, 1997
7⅛	July 1, 1997	Jan. 1, 1998
6⅜	Jan. 1, 1998	July 1, 1998
6⅛	July 1, 1998	Jan. 1, 1999
5½	Jan. 1, 1999	July 1, 1999
6⅛	July 1, 1999	Jan. 1, 2000
6½	Jan. 1, 2000	July 1, 2000
6½	July 1, 2000	Jan. 1, 2001
6	Jan. 1, 2001	July 1, 2001
5⅞	July 1, 2001	Jan. 1, 2002
5¼	Jan. 1, 2002	July 1, 2002
5¾	July 1, 2002	Jan. 1, 2003
5	Jan. 1, 2003	July 1, 2003
4½	July 1, 2003	Jan. 1, 2004
5⅛	Jan. 1, 2004	July 1, 2004
5½	July 1, 2004	Jan. 1, 2005
4⅞	Jan. 1, 2005	July 1, 2005
4½	July 1, 2005	Jan. 1, 2006
4⅞	Jan. 1, 2006	July 1, 2006
5⅜	July 1, 2006	Jan. 1, 2007
4¾	Jan. 1, 2007	July 1, 2007
5	July 1, 2007	Jan. 1, 2008
4½	Jan. 1, 2008	July 1, 2008
4⅝	July 1, 2008	Jan. 1, 2009
4⅛	Jan. 1, 2009	July 1, 2009
4⅛	July 1, 2009	Jan. 1, 2010
4¼	Jan. 1, 2010	July 1, 2010
4⅛	July 1, 2010	Jan. 1, 2011
3⅞	Jan. 1, 2011	July 1, 2011
4⅛	July 1, 2011	Jan. 1, 2012
2⅞	Jan. 1, 2012	July 1, 2012
2¾	July 1, 2012	Jan. 1, 2013
2½	Jan. 1, 2013	July 1, 2013
2⅞	July 1, 2013	Jan. 1, 2014
3⅝	Jan. 1, 2014	July 1, 2014
3¼	July 1, 2014	Jan. 1, 2015
3	Jan. 1, 2015	July 1, 2015

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2015, is 2¼ percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: January 26, 2015.

Biniam Gebre,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2015–01774 Filed 1–29–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA 104000]

Outer Continental Shelf, Gulf of Mexico, Oil and Gas Central Planning Area Lease Sales 241 and 247 and Eastern Planning Area Lease Sale 226

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability and announcement of public meetings and comment period.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) has prepared a Draft Supplemental Environmental Impact Statement (EIS) for proposed oil and gas Central Planning Area (CPA) Lease Sales 241 and 247 and Eastern Planning Area (EPA) Lease Sale 226 in the Gulf of Mexico (CPA 241/247/EPA 226 Draft Supplemental EIS). Proposed CPA Lease Sale 241 and EPA Lease Sale 226 are tentatively scheduled to be held in March 2016, and proposed CPA Lease Sale 247 is tentatively scheduled to be held in March 2017. The CPA 241/247/EPA 226 Draft Supplemental EIS updates the environmental and socioeconomic analyses in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2012–2017; Western Planning Area Lease Sales 229, 233, 238, 246, and 248; Central Planning Area Lease Sales 227, 231, 235, 241, and 247, Final Environmental Impact Statement* (2012–2017 WPA/CPA Multisale EIS) (OCS EIS/EA BOEM 2012–019); *Gulf of Mexico OCS Oil and Gas Lease Sales: 2014 and 2016; Eastern Planning Area Lease Sales 225 and 226, Final Environmental Impact Statement* (EPA 225/226 EIS) (OCS EIS/EA BOEM 2013–200); *Gulf of Mexico OCS Oil and Gas Lease Sales: 2013–2014; Western Planning Area Lease Sale 233; Central Planning Area Lease Sale 231, Final Supplemental Environmental Impact Statement* (WPA 233/CPA 231 Supplemental EIS) (OCS EIS/EA BOEM 2013–0118); *Gulf of Mexico OCS Oil and Gas Lease Sales: 2014–2016;* and *Gulf of Mexico OCS Oil and Gas Lease Sales: 2015–2017; Central Planning Area Lease Sales 235, 241, and 247, Final Supplemental Environmental Impact Statement* (CPA 235/241/247 Supplemental EIS) (OCS EIS/EA BOEM 2014–655).

Authority: This NOA is published pursuant to the Council on Environmental Quality regulations (40 CFR part 1503) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.* [1988]).

SUPPLEMENTARY INFORMATION: BOEM prepared the CPA 241/247/EPA 226 Draft Supplemental EIS to consider new information made available since completion of the 2012–2017 WPA/CPA Multisale EIS, WPA 233/CPA 231 Supplemental EIS, WPA 238/246/248 Supplemental EIS, and CPA 235/241/247 Supplemental EIS, and new information related to the *Deepwater Horizon* explosion, oil spill, and response. The CPA 241/EPA 226 Draft Supplemental EIS provides new information on the baseline conditions and potential environmental effects of oil and natural gas leasing, exploration, development, and production in the CPA and EPA. BOEM conducted an extensive search for new information, reviewing scientific journals and available scientific data and information from academic institutions and Federal, State, and local agencies; and interviewing personnel from academic institutions and Federal, State, and local agencies. BOEM examined the potential impacts of routine activities and accidental events and the proposed lease sales' incremental contribution to the cumulative impacts on environmental and socioeconomic resources. The oil and gas resource estimates and scenario for the CPA 241/247/EPA 226 Draft Supplemental EIS are presented as a range that would encompass the resources and activities estimated for each proposed lease sale.

Draft Supplemental EIS Availability: You may download or view the CPA 241/247/EPA 226 Draft Supplemental EIS on BOEM's Web site at *http://www.boem.gov/nepaprocess/.* In keeping with the Department of the Interior's mission of the protection of natural resources and to limit costs while ensuring availability of the document to the public, BOEM will primarily distribute digital copies of the CPA 241/247/EPA 226 Draft Supplemental EIS on compact discs. BOEM has printed and will be distributing a limited number of paper copies. If you require a paper copy, BOEM will provide one upon request if copies are still available. You may obtain a copy of the CPA 241/247/EPA 226 Draft Supplemental EIS from the Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Public Information Office (GM 335A), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394 (1–800–200–GULF).

Several libraries along the Gulf Coast have been sent copies of the CPA 241/247/EPA 226 Draft Supplemental EIS. To find out which libraries have copies of the CPA 241/247/EPA 226 Draft Supplemental EIS for review, you may contact BOEM's Public Information Office or visit BOEM's Web site at *http://www.boem.gov/nepaprocess/.*

Comments: All interested parties, including Federal, State, Tribal, and local governments, and other organizations and members of the public, may submit written comments on the CPA 241/247/EPA 226 Draft Supplemental EIS in one of the following ways:

1. In an envelope labeled ''Comments on the CPA 241/247/EPA 226 Draft Supplemental EIS'' and mailed (or hand carried) to Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394;

2. Through the regulations.gov web portal: Navigate to *http://www.regulations.gov* and search for ''Oil and Gas Lease Sales: Gulf of Mexico, Outer Continental Shelf; Central Planning Area Lease Sales 241 and 247 and Eastern Planning Area Lease Sale 226'' (It is important to include the quotation marks in your search terms). Click on the ''Comment Now!'' button to the right of the document link. Enter your information and comment, then click ''Submit''; or

3. Through BOEM's email address: *cpa241-epa226@boem.gov.*

Comments should be submitted no later than March 16, 2015.

Pursuant to the regulations implementing the procedural provisions of NEPA, BOEM will hold public meetings in Louisiana, Mississippi, Alabama, and Florida to solicit comments on the CPA 241/247/EPA 226 Draft Supplemental EIS. These meetings are scheduled as follows:

- *New Orleans, Louisiana:* Monday, February 23, 2015, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123, one meeting beginning at 1:00 p.m. CST;
- *Panama City, Florida:* Tuesday, February 24, 2015, Wyndham Bay Point Resort, 4114 Jan Cooley Drive, Panama City Beach, Florida, 32408, one meeting beginning at 4:00 p.m. CST;
- *Mobile, Alabama:* Wednesday, February 25, 2015, Hilton Garden Inn Mobile West, 828 West I–65 Service Road South, Mobile, Alabama 36609, one meeting beginning at 4:00 p.m. CST;
- *Gulfport, Mississippi:* Thursday, February 26, 2015, Courtyard by Marriott, Gulfport Beachfront MS Hotel, 1600 East Beach Boulevard, Gulfport, Mississippi 39501, one meeting beginning at 4:00 p.m. CST.

FOR FURTHER INFORMATION CONTACT: For more information on the CPA 241/247/EPA 226 Draft Supplemental EIS, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Office of Environment (GM 623E), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 or by email at *cpa241-epa226@boem.gov.* You may also contact Mr. Goeke by telephone at 504–736–3233.

Public Disclosure of Names and Addresses

As BOEM does not consider anonymous comments, please include your name and address as part of your submittal. BOEM makes all comments, including the names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that BOEM withhold their names and/or addresses from the public record; however, BOEM cannot guarantee that we will be able to do so. If you wish your name and/or address to be withheld, you must state your preference prominently at the beginning of your comment. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Dated: January 14, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–01758 Filed 1–29–15; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0009; DS63610300 DR2PS0000.CH7000 134D0102R2]

Agency Information Collection Activities: Collection of Monies Due the Federal Government; Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of extension.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an Information Collection Request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 1218. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: OMB has up to 60 days to approve or disapprove this information collection request but may respond after 30 days; therefore, you should submit your public comments to OMB by March 2, 2015 for the assurance of consideration.

ADDRESSES: You may submit your written comments directly to the Desk Officer for the Department of the Interior (OMB Control Number 1012–0008), Office of Information and Regulatory Affairs, OMB, by email to *OIRA_Submission@omb.eop.gov* or telefax at (202) 395–5806. Please also mail a copy of your comments to Mr. Luis Aguilar, Regulatory Specialist, ONRR, P.O. Box 25165, MS 61030A, Denver, Colorado 80225–0165, or email *Luis.Aguilar@onrr.gov.* Please reference OMB Control Number 1012–0008 in your comments.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Ms. Lee-Ann Martin, Reporting and Solid Minerals Services, ONRR, telephone (303) 231–3313, or email *LeeAnn.Martin@onrr.gov.* For other questions, contact Mr. Luis Aguilar, telephone (303) 231–3418, or email *Luis.Aguilar@onrr.gov.* You may also contact Mr. Aguilar to obtain copies (free of charge) of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION:

Title: Collection of Monies Due the Federal Government—30 CFR part 1218.

OMB Control Number: 1012–0008.

Bureau Form Number: Form ONRR–4425.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibility is to manage mineral resources production on Federal and Indian lands and the OCS, collect royalties due, and distribute the funds collected under those laws. ONRR performs the royalty management functions for the Secretary.

Public laws pertaining to mineral leases on Federal and Indian lands and the OCS are posted at *http://www.onrr.gov/Laws_R_D/PubLaws/default.htm.*

Minerals produced from Federal and Indian leases vary greatly in the nature of occurrence, production, and processing methods. When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee is required to report various kinds of information to the lessor relative to the disposition of the minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals. The information collected includes data necessary to ensure that production is accurately valued and that royalties are appropriately paid.

This ICR covers unique reporting circumstances, including (1) cross-lease netting in calculation of late-payment interest; (2) designation of a designee; and (3) Tribal permission for recoupment on Indian oil and gas leases.

Cross-Lease Netting in Calculation of Late-Payment Interest

Regulations at § 1218.54 require ONRR to assess interest on unpaid or underpaid amounts. ONRR distributes these interest revenues to States, Indian Tribes, and the U.S. Treasury based on financial lease distribution information. Current regulations at § 1218.42 provide that an overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine the net payment subject to interest when certain conditions are met. This process is called cross-lease netting. Sections 6(a), (b), and (c) of the Royalty Simplification and Fairness Act (RSFA) require ONRR to pay interest on lessees' Federal oil and gas overpayments made on or after February 13, 1997 (six months after the August 13, 1996, enactment of RSFA). ONRR implemented this RSFA provision in 1997 and began calculating interest on both underpayments and overpayments for Federal oil and gas leases, making the cross-lease netting provisions at § 1218.42 no longer applicable for these leases. However, lessees must still comply with the provisions at 30 CFR 1218.42(b) and (c) for Indian Tribal leases or Federal leases other than oil and gas. They must demonstrate that cross-lease netting is correct by submitting production reports, pipeline allocation reports, or other similar documentary evidence. This information is necessary in order for ONRR to determine the correct amount

of interest that the lessee owes and to ensure that we collect in full all monies owed to the Federal Government.

Designation of Designee

Requirements of RSFA established that owners of, primarily, operating rights or, secondarily, lease record title (both referred to as ''lessees'') are responsible for making royalty and related payments on Federal oil and gas leases (see 30 CFR 1218.52). It is common however, for a payor—rather than a lessee—to make these payments. When a payor makes payments on behalf of a lessee, RSFA section 6(g) requires that the lessee designate the payor as its designee and notify ONRR of this arrangement in writing. We designed Form ONRR–4425, Designation Form for Royalty Payment Responsibility, to request all the information necessary for lessees to comply with these RSFA requirements when choosing to designate an agent to pay for them. We require this information to ensure proper mineral revenue collection.

Tribal Permission for Recoupment on Indian Oil and Gas Leases

In order to report cross-lease netting on Indian oil and gas leases, lessees must also comply with regulations at 30 CFR 12l8.53(b), allowing only lessees with written permission from the Tribe to recoup overpayments on one lease against a different lease for which the Tribe is the lessor. The payor must provide ONRR with a copy of the Tribe's written permission.

OMB Approval

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge the duties of the office and may also result in the loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 35 Federal and Indian lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 59 hours.

We have not included in our estimates certain requirements performed in the normal course of business that are considered usual and customary. The following chart shows the estimated burden hours by CFR and paragraph:

Citation 30 CFR Part 1218	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart A—General Provisions—Cross-lease netting in calculation of late-payment interest.				
1218.42(b) and (c)	Cross-lease netting in calculation of late-payment interest. (b) Royalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset . . . if . . . the payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information. . . . (c) If ONRR assesses late-payment interest and the payor asserts that some or all of the interest is not owed . . . the burden is on the payor to demonstrate that the exception applies. . . .	2	25	50
Subpart B—Oil and Gas, General—How does a lessee designate a Designee?				
1218.52(a), (c), and (d)	How does a lessee designate a Designee? (a) If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf . . . you must notify ONRR . . . in writing of such designation. . . . (c) If you want to terminate a designation . . . you must provide [the following] to ONRR in writing. . . . (d) ONRR may require you to provide notice when there is a change in the percentage of your record title or operating rights ownership. ONRR currently uses Form ONRR–4425, Designation Form for Royalty Payment Responsibility, to collect this information.	0.75	5	4
Subpart B—Oil and Gas, General—Recoupment of overpayments on Indian mineral leases.				
1218.53(b)	Recoupment of overpayments on Indian mineral leases. (b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed . . . under other leases. . . . A copy of the tribe's written permission must be furnished to ONRR. . . .	1	5	5
TOTAL BURDEN			35	59

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour cost'' burden associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor—and a person is not required to respond to—a collection of information unless it

displays a currently valid OMB control number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on May 28, 2014 (79 FR 30651), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comment by March 2, 2015.

Public Comment Policy: ONRR will post all comments, including names and addresses of respondents at *http://www.regulations.gov.* Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us, in your comment, to withhold PII from public view, we cannot guarantee that we will be able to do so.

Dated: January 28, 2015.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2015–01886 Filed 1–29–15; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1092 (Review)]

Diamond Sawblades and Parts Thereof From China; Determination To Conduct a Full Five-Year Review and Scheduling of the Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on diamond sawblades and parts thereof from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission also gives notice of the scheduling of the full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 22, 2015.

FOR FURTHER INFORMATION CONTACT: Michael Szustakowski (202) 205–3169, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 2, 2013, the Commission instituted a five-year review on the antidumping duty order on imports of diamond sawblades and parts thereof from China (78 FR 72116, December 2, 2013). The U.S. Department of Commerce initiated its five-year review of the order on the same day (78 FR 72061, December 2, 2013). The Diamond Sawblades Manufacturers' Coalition (DSMC), an association of domestic producers of diamond sawblades, filed an action in the U.S. Court of International Trade (CIT) to declare that the five-year reviews that Commerce initiated and the Commission instituted were *ultra vires* because they began prematurely. On September 23, 2014, the CIT directed the Commission to cease further work on the five-year review it previously instituted, and to instead institute a review on November 4, 2014. Prior to terminating proceedings, the Commission had voted to conduct a full review.

Effective November 4, 2014, the Commission rescinded the previously instituted five-year review and instituted the current review (79 FR 65420, November 4, 2014). The institution notice for the current review gave notification that the Commission reserved the right to waive its regulations concerning filing of comments on whether to conduct an expedited review. The Commission stated in the notice that both domestic and respondent interested parties responded to the notice of institution it published on December 2, 2013, and that in light of these responses the Commission determined that conducting a full review was appropriate.

In its November 4, 2014 notice, the Commission did not require those interested parties that submitted adequate responses to the December 2, 2013 institution notice to submit full responses. Instead, the Commission stated that each such party could submit a response no later than December 4, 2014 indicating that: (1) It incorporated the contents of its response to the December 2, 2013 institution notice and (2) that it was willing to participate in this review by providing information requested to the Commission. Any such party was also allowed to provide additional information of the nature specified in the notice. Parties that did not submit an adequate response to the December 2, 2013 institution notice were also allowed to provide additional information of the nature specified in the notice no later than December 4, 2014.

The notice also stated that should those parties that submitted adequate responses to the December 2, 2013 institution notice indicate their desire to participate in this review, the Commission intended to issue a notice stating that it will conduct a full review. In light of this, the Commission reserved the right to waive the process specified in 19 CFR 207.62(b) for submitting comments to the Commission on

whether to conduct an expedited review.

Three sets of parties provided adequate responses to the previously instituted reviews: (1) DSMC and its individual members (U.S. producers of the domestic like product), (2) Husqvarna Construction Products North American, Inc. (U.S. producer of the domestic like product and importer of subject merchandise) and Husqvarna (Hebei) Co., Ltd. (foreign producer of the subject merchandise), and (3) Saint-Gobain Abrasives-North America (importer of the subject merchandise) and Saint-Gobain Abrasives (Shanghai) Co. Ltd. (foreign producer of the subject merchandise).

These same parties provided responses to the current notice of institution. As requested by the notice, all parties incorporated the contents of their responses to the December 2, 2013 notice and stated their willingness to participate in this review by providing information requested by the Commission. No new party submitted a response to the current notice of institution.

The requirements listed in the Commission's November 4, 2014 notice have been fulfilled. Accordingly, the Commission waives the process specified in 19 CFR 207.62(b) for submitting comments to the Commission on whether to conduct an expedited review, and determines that a full review pursuant to section 751(c)(5) of the Act should proceed.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on Friday, June 3, 2015, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on Tuesday, June 23, 2015, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Thursday, June 18, 2015. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on Monday, June 22, 2015, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is Friday, June 12, 2015. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is Thursday, July 2, 2015. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before Thursday, July 2, 2015. On Thursday, July 30, 2015, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before Monday, August 3, 2015, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 26, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–01783 Filed 1–29–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0012]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Application for Registration, Application for Registration Renewal, Affidavit for Chain Renewal (DEA Forms 225, 225a and 225b)

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until March 31, 2015.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; 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 forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Registration, Application for Registration Renewal, Affidavit for Chain Renewal.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers are DEA Forms 225, 225a, and 225b. The applicable component within the Department of Justice is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions, Federal, State, local, and tribal governments.

Abstract: The Controlled Substances Act requires all businesses and individuals who manufacture, distribute, import, export, and conduct research and laboratory analysis with controlled substances to register with DEA. 21 U.S.C. 822, 21 CFR 1301.11 and 1301.13. Registration is a necessary control measure and helps to prevent diversion by ensuring the closed system of distribution of controlled substances can be monitored by DEA and the businesses and individuals handling controlled substances are qualified to do so and are accountable.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA Form 225 is only for registration of controlled substance manufacturers, distributors, importers, exporters, researchers, canine handlers, and analytical laboratories, and list 1 chemical manufacturers and importers. DEA Form 225 is submitted on an as-needed basis by persons seeking to become registered, DEA Form 225a is submitted annually thereafter to renew existing registrations, and DEA Form 225b is submitted annually for renewals of chain registrants. Chain registrants are those corporations and laboratories that maintain separate registrations at multiple locations (*e.g.,* distributors) and may renew all their registrations using a single DEA Form 225b.

	Number of annual respondents	Average time per response **	Total annual hours
DEA–225 (paper)	334	0.33 hours (20 minutes)	111
DEA–225 (online)	2,157	0.17 hours (10 minutes)	360
DEA–225a (paper)	737	0.25 hours (15 minutes)	184
DEA–225a (online)	11,554	0.12 hours (7 minutes)	1,348
DEA–225b (chain renewal) * (paper)	5	1 hour	5
Total	14,787		2,008

* In total, 5 chains represent 138 specific registered locations.
** Figures are rounded.

6. *An estimate of the total public burden (in hours) associated with the collection:* The DEA estimates that there are 2,008 annual burden hours associated with this proposed collection.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: January 26, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–01738 Filed 1–29–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0015]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Application for Registration and Application for Registration Renewal (DEA Forms 363 and 363a)

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be

submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until March 31, 2015.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; 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 forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Registration and Application for Registration Renewal.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The forms numbers are DEA Forms 363 and 363a. The applicable component within the Department of Justice is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions, Federal, State, local, and tribal governments.

Abstract: The Controlled Substances Act requires practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment to register annually with DEA.[1] 21 U.S.C. 822, 823; 21 CFR 1301.11 and 1301.13. Registration is a necessary control measure and helps to prevent diversion by ensuring the closed system of distribution of controlled substances can be monitored by DEA and the businesses and individuals handling controlled substances are qualified to do so and are accountable.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA Form 363 is submitted on an as needed basis by persons seeking to become registered; DEA Form 363a is submitted on an annual basis thereafter to renew existing registrations.

	Number of annual respondents	Average time per response *	Total annual hours
DEA–363 (paper)	17	0.33 hours (20 minutes)	6
DEA–363 (online)	135	0.13 hours (8 minutes)	18
DEA–363a (paper)	141	0.25 hours (15 minutes)	35
DEA–363a (online)	1,141	0.10 hours (6 minutes)	114
Total	1,434		173

* Figures are rounded.

6. *An estimate of the total public burden (in hours) associated with the collection:* The DEA estimates that there are 173 annual burden hours associated with this proposed collection.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: January 26, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–01739 Filed 1–29–15; 8:45 am]

BILLING CODE 4410–09–P

[1] This registration requirement is waived for certain practitioners under specified circumstances. See 21 U.S.C. 823(g)(2).

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

On January 23, 2015 the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Washington in the lawsuit entitled *United States* v. *Spokane County, Washington,* Civil Action No. 15–00018.

The proposed Consent Decree resolves the claims alleged in the Complaint, filed concurrently with the lodging of the Decree, against Spokane County under Sections 107(a) and 106 of CERCLA, seeking the recovery of the United States' response costs and performance of a removal action for the Vermiculite Northwest—Spokane County Superfund Site (''Site''). The County is the owner of the Site, which was formerly owned and operated as a vermiculite ore processing facility. The County installed a cap over asbestos-contaminated soils at the Site, and subsequently, EPA selected a removal action that requires the County to implement institutional controls that provide for, *inter alia,* maintenance of the cap and restrictions on soil disturbing activities that might cause a release of asbestos. The proposed Consent Decree requires the County to perform the removal action by recording and complying with an Environmental Covenant attached to the Decree and reimburse the United States' past costs of $101,796.50, as well as future response costs.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Spokane County, Washington,* D.J. Ref. No. 90–11–3–10899. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $15.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–01697 Filed 1–29–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation of Settlement and Judgment Under the Clean Water Act

On January 14, 2015, the Department of Justice lodged a proposed Stipulation of Settlement and Judgment (the ''Stipulation of Settlement'') with the United States Court for the Southern District of Iowa in the lawsuit entitled *United States* v. *Twin County Dairy, Inc.,* (S.D. Iowa), No. 3:15-cv-00009.

The Stipulation of Settlement resolves the United States' claims against Twin County Dairy, Inc., for alleged violations of the Clean Water Act, 33 U.S.C. 1251, *et seq.,* as set forth in the United States' complaint filed on January 14, 2015. In this action, the United States sought penalties pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b), (d), against Twin County Dairy, Inc. (the ''Settling Defendant''). The Complaint alleged that the Settling Defendant violated the conditions of National Pollutant Discharge Elimination System (''NPDES'') permits issued by the State of Iowa pursuant to the Clean Water Act, 33 U.S.C. 1342, at its dairy in Kalona, Iowa. Twin County Dairy, Inc. no longer owns nor operates the dairy, including its wastewater treatment plant, in Kalona, Iowa. Thus, pursuant to the proposed Stipulation of Settlement, the Settling Defendant certifies that it has ceased the alleged violations in the Complaint. Under the Stipulation of Settlement, the Settling Defendant will pay to the United States $200,000 in penalties for the violations alleged in the Complaint.

The publication of this notice opens a period for public comment on the proposed Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Twin County Dairy, Inc.* (S.D. Iowa) No. 3:15–cv–00009, D.J. Ref. 90–5–1–1–10716. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Stipulation of Settlement may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Stipulation of Settlement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $2.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–01740 Filed 1–29–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TÜV Rheinland of North America, Inc.: Application for Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TÜV Rheinland of North America, Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 17, 2015.

ADDRESSES: Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2007–0042, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2007–0042). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://*

www.regulations.gov. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before February 17, 2015 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov*.

General and technical information: Contact Mr. Kevin Robinson, Acting Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *robinson.kevin@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that TÜV Rheinland of North America, Inc. (TUVRNA), is applying for expansion of its current recognition as an NRTL. TUVRNA requests the addition of one test standard to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including TUVRNA, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*.

TUVRNA currently has two facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: TÜV Rheinland of North America, Inc., 12 Commerce Rd., Newtown, Connecticut 06470. A complete list of TUVRNA's scope of recognition is available at *http://www.osha.gov/dts/otpca/nrtl/tuv.html*.

II. General Background on the Application

TUVRNA submitted an application, dated August 27, 2014 (Exhibit 14–1–TUVRNA Request for Expansion), to expand its recognition to include one additional test standard. OSHA staff performed a comparability analysis and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists the appropriate test standard found in TUVRNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
AAMI ES60601–1	Medical electrical equipment–Part 1: General requirements for basic safety and essential performance.

III. Preliminary Findings on the Application

TUVRNA submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file, and the comparability analysis, indicate that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of this one test standard for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's application.

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at

http://www.regulations.gov under Docket No. OSHA–2007–0042.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant TUVRNA's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of its final decision in the **Federal Register**.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on January 27, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–01797 Filed 1–29–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0007]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

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

ACTION: Notice of MACOSH Meeting.

SUMMARY: This **Federal Register** notice announces meetings of the full Committee and the workgroups on February 24 and 25, 2015 in Washington, DC.

DATES: *MACOSH meeting:* MACOSH will meet from 9 a.m. until approximately 5 p.m. on February 24 and 25, 2015.

Submission of comments, requests to speak, and requests for special accommodation: Submit comments, requests to speak at the full Committee meeting, and requests for special accommodations for these meetings (postmarked, sent, or transmitted) by February 1, 2015.

ADDRESSES: The Committee and workgroups will meet at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, in Conference Room N–3437. Meeting attendees must use the visitor's entrance located at 3rd & C Streets NW.

Submission of comments and requests to speak: Submit comments and requests to speak at the MACOSH meetings, identified by the docket number for this **Federal Register** notice (Docket No. OSHA 2013–0007), by one of the following methods:

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If comments, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand (courier) delivery, and messenger service: When using this method, submit a copy of comments and attachments to the OSHA Docket Office, Docket No. OSHA–2013–0007, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. The Docket Office accepts deliveries (express mail, hand (courier) delivery, and messenger service) during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Requests for special accommodations: Submit requests for special accommodations for MACOSH and its workgroup meetings by hard copy, telephone, or email to: Gretta Jameson, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *jameson.grettah@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2013–0007). Because of security-related procedures, submissions by regular mail may result in a significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by express mail, hand (courier) delivery, and messenger service.

OSHA will place comments and requests to speak, including personal information, in the public docket which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download documents in the public docket for this MACOSH meeting, go to *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions are available for inspection and, when permitted, copying at the OSHA Docket Office at the above address. For information on using *http://www.regulations.gov* to make submissions or to access the docket, click on the ''Help'' tab at the top of the Home page. Contact the OSHA Docket Office for information about materials not available through that Web site and for assistance in using the Internet to locate submissions and other documents in the docket.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.frank2@dol.gov.*

For general information about MACOSH and this meeting: Amy Wangdahl, Director, Office of Maritime and Agriculture, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2066; email: *wangdahl.amy@dol.gov.*

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

SUPPLEMENTARY INFORMATION: All MACOSH committee and workgroup meetings are open to the public. Interested persons may attend the full Committee and its workgroup meetings at the time and place listed above. The full Committee will meet from 9 a.m. until approximately 5 p.m. on February 25, 2015, in Conference Room N–3437. The full Committee agenda will include: updates from OSHA directorates; an update on maritime-related OSHA alliances; a discussion on the use of liquefied natural gas (LNG) as a fuel in the maritime industry; and reports from

the Longshoring and Shipyard workgroups.

The Longshoring and Shipyard workgroups will meet from 9 a.m. until approximately 5 p.m. on February 24, 2015, in Conference Rooms N–3437A and N–3437C. The workgroups will discuss housekeeping and sanitation in the fishing industry and in shipyard employment; spray painting in shipyards; baggage handling in cruise terminal operations; and the translation of OSHA maritime guidance documents into Spanish.

Public Participation: Any individual attending the MACOSH meeting, including the workgroup meetings, at the U.S. Department of Labor, Frances Perkins Building, must use the entrance located at 3rd & C Streets NW. and pass through Building Security. Attendees must have valid government-issued photo identification to enter the building. Please contact Gretta Jameson at (202) 693–2176 (email: *jameson.grettah@dol.gov*) for additional information about building security measures for attending the MACOSH Committee and workgroup meetings. Interested parties may submit a request to make an oral presentation to MACOSH by any one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (*e.g.,* organization name), if any, and a brief outline of the presentation. The MACOSH Chair has discretion to grant requests to address the full Committee as time permits.

Interested parties also may submit written comments, including data and other information, using any one of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to MACOSH members prior to the meeting. Individuals who need special accommodations to attend the MACOSH meeting should contact Gretta Jameson as specified above under the heading ''Requests for special accommodations'' in the **ADDRESSES** section.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655, 656, 5 U.S.C. App. 2, Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR part 1912.

Signed at Washington, DC, on January 27, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–01796 Filed 1–29–15; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference from the National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506 as follows (all meetings are Eastern time and ending times are approximate):

International (application review): This meeting will be closed.

DATES: February 18, 2015 12:00 p.m. to 1:00 p.m.

International (application review): This meeting will be closed.

DATES: February 18, 2015 4:30 p.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: January 27, 2015.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2015–01782 Filed 1–29–15; 8:45 am]

BILLING CODE 7537–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31428; 812–14361]

Goldman Sachs ETF Trust, et al.; Notice of Application

January 26, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

Applicants: Goldman Sachs ETF Trust (the ''Trust''), Goldman Sachs Asset Management, L.P., GS Investment Strategies, LLC, and Goldman Sachs Asset Management International (each, an ''Initial Adviser''), and ALPS Distributors, Inc. (the ''Initial Distributor'').

DATES: *Filing Dates:* The application was filed on September 19, 2014, and

amended on December 23, 2014 and January 20, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 20, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: The Trust, Goldman Sachs Asset Management, L.P., and GS Investment Strategies, LLC, 200 West Street, New York, New York 10282; Goldman Sachs Asset Management International, River Court, 120 Fleet Street, London, EC4A 2BE, United Kingdom; and the Initial Distributor, 1290 Broadway, Suite 1100, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878, or Dalia Blass, Assistant Chief Counsel, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a Delaware statutory trust that has registered under the Act as an open-end management investment company with multiple series. The Trust will offer a number of Funds (as defined below), each tracking a particular index and utilizing either a replication or representative sampling strategy. Applicants expect that the initial series of the Trust (the ''Initial Funds'') will seek investment results that correspond generally to the performance of the underlying indexes described in Appendix A to the application. Each Fund will operate as an exchange traded fund (''ETF'').

2. An Initial Adviser will be the investment adviser to each Initial Fund and an Adviser (as defined below) will be the investment adviser to the Funds. The Initial Advisers are, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers (each, a ''Sub-Adviser'') to particular Funds, or their respective Master Fund (as defined below). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Initial Distributor will serve as the principal underwriter and distributor for the Initial Funds. Applicants request that the order also apply to any future distributor of Shares (''Future Distributor'' and, together with the Initial Distributor, the ''Distributor''), provided that any such Future Distributor complies with the terms and conditions of the application. The Distributor may be an affiliated person or an affiliated person of an affiliated person of that Fund's Adviser and/or Sub-Advisers.

4. Applicants request that the order apply to the Initial Funds and any additional series of the Trust and any other existing or future open-end management investment company or existing or future series thereof (''Future Funds'' and together with the Initial Funds, ''Funds''), that operate as ETFs, and their respective existing or future Master Funds, and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by an Initial Adviser or an entity controlling, controlled by, or under common control with an Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.[1]

5. Applicants state that a Fund may operate as a Feeder Fund in a master-feeder structure. Applicants request that the order permit a Feeder Fund to acquire shares of a Master Fund, which will be another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund, beyond the limitations in section 12(d)(1)(A) of the Act and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act (''Master-Feeder Relief''). Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.[2] There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. Each Fund, or its respective Master Fund, will hold certain securities, assets or other positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. Certain Funds will be based on Underlying Indexes comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (''Foreign Funds'').

7. Applicants represent that each Fund, or its respective Master Fund, will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities''), or, in the case of Fixed Income Funds,[3] in the Component Securities of its respective Underlying Index and TBA Transactions[4] representing Component Securities and, in the case of Foreign Funds, Component Securities and Depositary Receipts[5] representing

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. The Feeder Fund's Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest its portfolio in compliance with the requested order.

[3] ''Fixed-Income Funds'' track an Underlying Index comprised of domestic and/or foreign fixed income securities.

[4] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[5] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds, or their respective Master Funds, may invest in Depositary Receipts

Component Securities.[6] Each Fund, or its respective Master Fund, may also invest up to 20% (''20% Asset Basket'') of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund, or its respective Master Fund, track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

8. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index[7] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day (as defined below), for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's, or its respective Master Fund's, Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).[8] The information provided on the Web site will be formatted to be reader-friendly.

9. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund, or its respective Master Fund, will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

10. The Initial Funds are, and any Future Fund will be, entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[9] A ''Self-Indexing Fund'' is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of such person, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'')[10] will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[11] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an affiliated person, or an affiliated person of an affiliated person, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

11. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

12. Applicants propose that each day that the Trust, the NYSE and the national securities exchange (as defined in section 2(a)(26) of the Act) (an ''Exchange'') on which the Fund's Shares are primarily listed (''Listing Exchange'') are open for business, including any day that a Fund is required to be open under section 22(e) of the Act (a ''Business Day''), each Self-Indexing Fund will post on its Web site, before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings held by the Fund, or its respective Master Fund, that will form the basis for the Fund's calculation of its NAV at the end of the Business Day.[12] Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will also provide an additional mechanism for addressing any such potential conflicts of interest.

representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund, or its respective Master Fund, will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund, or its respective Master Fund, except a depositary bank that is deemed to be affiliated solely because a Fund owns greater than 5% of the outstanding voting securities of such depositary bank.

[6] With respect to a Fund, or its respective Master Fund, that invests in a Wholly-Owned Subsidiary (defined below), the Fund, or its respective Master Fund, will look through the Wholly-Owned Subsidiary to determine whether certain assets fall within the 20% Asset Basket (as defined below).

[7] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[8] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day. This disclosure will look through any Wholly-Owned Subsidiary (defined below) and identify the specific Portfolio Holdings held by that entity.

[9] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (as defined below), or in case of a sub-licensing agreement, the Adviser, must provide the use of the Affiliated Indexes (as defined below) and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[10] In the event that an Adviser serves as the Affiliated Index Provider for a Self-Indexing Fund, the terms ''Affiliated Index Provider'' or ''Index Provider,'' with respect to that Self-Indexing Fund, will refer to the employees of the applicable Adviser that are responsible for creating, compiling and maintaining the relevant Underlying Index.

[11] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors, foreign investment companies, and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts, foreign investment companies, and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[12] This disclosure will look through any Wholly-Owned Subsidiary (defined below) and identify the specific Portfolio Holdings held by that entity.

13. In addition, applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self-Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[13]

14. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, each Initial Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Initial Adviser or an associated person (''Inside Information Policy''). Any other Adviser or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics [14] and Inside Information Policy of each Adviser and Sub-Advisers, personnel of those entities with knowledge about the composition of the Portfolio Deposit [15] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

15. To the extent the Self-Indexing Funds transact with an affiliated person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, an Adviser, affiliated persons of the Adviser (''Adviser Affiliates'') and affiliated persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission. Applications for prior orders granted to Self-Indexing Funds have received relief to operate such funds on the basis discussed above.[16]

16. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[17] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) [18] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [19] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind [20] will be excluded from the Deposit Instruments and the Redemption Instruments; [21](d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [22] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying

[13] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[14] Each Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[15] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

[16] *See, e.g.,* Emerging Global Advisors, LLC, et al., Investment Company Act Release Nos. 30910 (Feb. 10, 2014) (notice) and 30975 (Mar. 7, 2014) (order); VTL Associates, LLC, et al., Investment Company Act Release Nos. 30763 (Oct. 24, 2013) (notice) and 30789 (Nov. 19, 2013) (order); Guggenheim Funds Investment Advisors, LLC, Investment Company Act Release Nos. 30560 (June 14, 2013) (notice) and 30598 (July 10, 2013) (order); and Sigma Investment Advisors, LLC, Investment Company Act Release Nos. 30559 (June 14, 2013) (notice) and 30597 (July 10, 2013) (order).

[17] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[18] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[19] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[20] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[21] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[22] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

17. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant (as defined below), the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [23] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[24]

18. Creation Units will consist of specified large aggregations of Shares (*e.g.,* 10,000 Shares), and it is expected that the initial trading price per individual Share will range from $10 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' *i.e.,* a broker-dealer (''Broker'') or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

19. Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange, or other major market data provider, will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, or other widely disseminated means, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

20. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. With respect to Feeder Funds, the Transaction Fee would be paid indirectly to the Master Fund.[25] In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[26] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

21. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

22. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[27] The

[23] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[24] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[25] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

[26] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[27] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares.

Continued

price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

23. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

24. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.[28] Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.[29]

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of

Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

[28] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

[29] The Master Funds will not require relief from Section 22(d) or Rule 22c–1 because shares of the Master Funds will not trade at negotiated prices in the secondary market.

a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign Portfolio Holdings held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days. Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption.[30]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fifteen calendar days would not be inconsistent with the spirit and intent of section 22(e).[31] Applicants suggest that a redemption payment occurring within fifteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.[32]

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a ''Fund of Funds Sub-Adviser''). Any Fund of Funds Adviser will be registered under the Advisers Act. Any Fund of Funds Sub-Adviser will be registered under the Advisers Act or will not be required to register. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[33] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, or their respective Master Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund, or its respective Master Fund, to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose

[30] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[31] Other feeder funds invested in any Master Fund are not seeking, and will not rely on, the section 22(e) relief requested herein.

[32] In addition, the requested exemption from section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

[33] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund, or its respective Master Fund, and any person controlling, controlled by or under common control with any of these entities.

relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[34]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund, nor its respective Master Fund, will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, other than a Wholly-Owned Subsidiary,[35] except to the extent permitted by exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

19. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of section 12(d)(1)(A) and (B) shall not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held by the investing investment company (in this case, the Feeder Fund). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from section 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

20. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor an affiliated person of an affiliated person of the Funds.

21. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are affiliated persons of the Funds, or an affiliated person of such affiliated person of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

[34] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[35] A Fund, or its respective Master Fund, may invest in a wholly-owned subsidiary, organized under the laws of the Cayman Islands as an exempted company or under the laws of another non-U.S. jurisdiction (each, a ''Wholly-Owned Subsidiary''), in order to pursue its investment objectives and/or ensure that the Fund remains qualified as a registered investment company for U.S. federal income tax purposes. Certain Wholly-Owned Subsidiaries may be investment companies or excluded from the definition of investment company by section 3(c)(1) or 3(c)(7) of the Act. For a Fund, or its respective Master Fund, that invests in a Wholly-Owned Subsidiary, the Adviser will serve as investment adviser to both the Fund, or its respective Master Fund, and the Wholly-Owned Subsidiary. A Feeder Fund will not invest in a Wholly-Owned Subsidiary.

22. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund, or its respective Master Fund, and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or affiliated persons of affiliated persons of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

23. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[36] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[37] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

24. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve ''overreaching'' by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transactions are consistent with the policy of each Fund and will be consistent with the investment objectives and policies of each Fund of Funds, and the proposed transactions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations, other than the Master-Feeder Relief, will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day,

[36] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[37] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

before commencement of trading of Shares on the Exchange, the Fund's, or its respective Master Fund's, Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for the Self-Indexing Fund, or its respective Master Fund, through a transaction in which the Self-Indexing Fund, or its respective Master Fund, could not engage directly.

B. Fund of Funds Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund, or its respective Master Fund, within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund, or its respective Master Fund, for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund, or its respective Master Fund, or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund, or its respective Master Fund, or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, or its respective Master Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund, or its respective Master Fund, to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund, or its respective Master Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund, or its respective Master Fund, and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund, or its respective Master Fund, under rule 12b–l under the Act) received from a Fund, or its respective Master Fund, by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund, or its respective Master Fund, by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, or its respective Master Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund, or its respective Master Fund, to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, or its respective Master Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund, or its respective Master Fund, in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund, or its respective Master Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund, or its respective Master Fund, in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund, or its respective Master Fund, will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in

which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund, or its respective Master Fund, in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund, or its respective Master Fund, will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, other than any Wholly-Owned Subsidiary, and except to the extent (i) the Fund, or its respective Master Fund, acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund, or its respective Master Fund, to acquire securities of one or more investment companies for short-term cash management purposes or (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–01750 Filed 1–29–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31427; 812–14362]

Goldman Sachs ETF Trust, et al.; Notice of Application

January 26, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Goldman Sachs ETF Trust (the ''Trust''), Goldman Sachs Asset Management, L.P., GS Investment Strategies, LLC, and Goldman Sachs Asset Management International (each, an ''Initial Adviser''), and ALPS Distributors, Inc. (the ''Initial Distributor'').

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and certain series to perform creations and redemptions of Creation Units in-kind in a master-feeder structure.

DATES: *Filing Dates:* The application was filed on September 19, 2014 and amended on December 23, 2014 and January 20, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 20, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: The Trust, Goldman Sachs Asset Management, L.P., and GS Investment Strategies, LLC, 200 West Street, New York, New York 10282; Goldman Sachs Asset Management International, River Court, 120 Fleet Street, London, EC4A 2BE, United Kingdom; and the Initial Distributor, 1290 Broadway, Suite 1100, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: Mark Zaruba, Senior Counsel, at (202) 551–6878 or Dalia Blass, Assistant Chief Counsel, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust has registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust will offer a number of Funds (as defined below), each of which will utilize active management investment strategies. Applicants expect the initial series of the Trust (the ''Initial Fund'') to be the Goldman Sachs Equity Dividend Fund, which will seek total return with an emphasis on dividends. The Initial Fund will seek to achieve its investment objective by investing in dividend-paying equity investments in U.S. issuers (including foreign issuers that are traded in the United States) with large public stock market capitalizations.

2. An Initial Adviser will be the investment adviser to the Initial Fund and an Adviser (as defined below) will be the investment adviser to the Funds. The Initial Advisers are, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser (as defined below) may in the future retain one or more sub-advisers (each a ''Sub-Adviser'') to manage the portfolios of the Funds (as defined below). Any Sub-Adviser will be registered, or not subject to registration, under the Advisers Act. The Initial Distributor is a registered broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (''Exchange Act'') and will act as the distributor and principal underwriter of the Funds. Applicants request that the order also apply to any future distributor of Shares (''Future Distributor'' and, together with the Initial Distributor, the ''Distributor''), provided that any such Future Distributor complies with the terms and conditions of the application.

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust as well as other open-end management companies that may utilize active management investment strategies (''Future Funds''). Any Future Fund will (a) be advised by an Initial Adviser or an entity controlling, controlled by, or under common control with an Initial Adviser (any Initial Adviser and each such other entity included in the term ''Adviser''), and (b) comply with the terms and conditions of the application.[1] The Initial Fund and Future Funds together are the ''Funds.'' Each Fund, or its respective Master Fund (as defined below), will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. and/or non-U.S. markets, and derivatives, other assets, and other investment positions (''Portfolio Instruments'').[2] Funds, or their respective Master Funds, may invest in ''Depositary Receipts.'' [3] Each Fund will operate as an actively managed exchange-traded fund (''ETF''), and a Fund may operate as a feeder fund in a master-feeder structure (''Feeder Fund'').

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together, ''Investing Funds''). Investing Funds do not include the Funds.[4]

5. Applicants further request that the order permit a Fund to operate as a Feeder Fund (''Master-Feeder Relief''). Under the order, a Feeder Fund would be permitted to acquire shares of another registered investment company in the same group of investment companies having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) of the Act,[5] and the Master Fund, and any principal underwriter for the Master Fund, would be permitted to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B) of the Act. Applicants request that the Master-Feeder Relief apply to any Feeder Fund, any Master Fund and any principal underwriter for the Master Funds selling shares of a Master Fund to a Feeder Fund. Applicants state that creating an exchange-traded feeder fund may be preferable to creating entirely new series for several reasons, including avoiding additional overhead costs and economies of scale for the Feeder Funds.[6] Applicants assert that, while certain costs may be higher in a master-feeder structure and there may possibly be lower tax efficiencies for the Feeder Funds, the Feeder Funds' Board will consider any such potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure.

6. Applicants anticipate that a Creation Unit will consist of at least 10,000 Shares. Applicants anticipate that the trading price of a Share will range from $10 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a

[1] Any Adviser to a Future Fund will be registered as an investment adviser under the Advisers Act. All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] If a Fund (or its respective Master Fund) invests in derivatives, then (a) the board of trustees (''Board'') of the Fund will periodically review and approve the Fund's use of derivatives and how the Fund's (or, in the case of a Feeder Fund, its Master Fund's) investment adviser assesses and manages risk with respect to the Fund's (or, in the case of a Feeder Fund, its Master Fund's) use of derivatives and (b) the Fund's (or, in the case of a Feeder Fund, its Master Fund's) disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[3] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. A Fund (or its respective Master Fund) will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants, any Future Fund, any Adviser, or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund, or its respective Master Fund, except a depositary bank that is deemed to be affiliated solely because a Fund owns greater than 5% of the outstanding voting securities of such depositary bank.

[4] An Investing Fund may rely on the order only to invest in Funds and not in any other registered investment company.

[5] A Feeder Fund managed in a master-feeder structure will not make direct investments in any security or other instrument other than the securities issued by its respective Master Fund.

[6] In a master-feeder structure, the Master Fund, rather than the Feeder Fund, would invest its portfolio in compliance with the order. There would be no ability by Fund shareholders to exchange shares of Feeder Funds for shares of another feeder series of the Master Fund.

clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (such participant, ''DTC Participant'').

7. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[7] On any given Business Day [8] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[9] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [10] or (c) TBA Transactions,[11] short positions and other positions that cannot be transferred in kind [12] will be excluded from the Creation Basket.[13] If there is a difference between NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

8. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Funds holding non-U.S. investment (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[14]

9. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

10. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the ''Transaction Fee'').[15] The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Adviser to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.[16] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those Authorized Participants purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

11. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange

[7] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[8] Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[9] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[10] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[11] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[12] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[13] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[14] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[15] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

[16] Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

specialists or market makers (''Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage fees and charges.

12. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[17] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[18] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

13. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

14. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described there will be an appropriate statement to the effect that Shares are not individually redeemable.

15. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund (or its respective Master Fund) [19] that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[20] This disclosure will look through any Wholly-Owned Subsidiary (defined below) and identify the specific Portfolio Instruments held by that entity.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only.[21] Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act.

[17] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Stock Exchange (including NYSE Arca), one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on that Stock Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

[18] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[19] Feeder Funds will disclose information about the securities and other assets held by the Master Fund.

[20] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for its NAV calculation at the end of such Business Day.

[21] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will issue individually redeemable securities.

Applicants request an exemption under section 6(c) from these provisions.[22]

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 15 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 15 calendar days following the tender of a Creation Unit.[23]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 15 calendar days would not be inconsistent with the spirit and intent of section 22(e).[24] Applicants state each Global Fund's statement of additional information (''SAI'') will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect redemptions in-kind.[25]

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Adviser''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Sub-Adviser''), any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Adviser or any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser

[22] The Master Funds will not require relief from section 22(d) or rule 22c–1 because shares of the Master Funds will not trade at negotiated prices in the secondary market.

[23] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[24] Other feeder funds invested in any Master Fund are not seeking, and will not rely on, the section 22(e) relief requested herein.

[25] In addition, the requested exemption from section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

(''Investing Fund's Sub-Advisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [26] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[27]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, other than a Wholly-Owned Subsidiary,[28] except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

16. Applicants also are seeking relief from Sections 12(d)(1)(A) and 12(d)(1)(B) to the extent necessary to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of sections 12(d)(1)(A) and (B) will not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held in the investing fund's portfolio (in this case, the Feeder Fund's portfolio). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from sections 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser (an ''Affiliated Fund'').

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[29] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or second-tier affiliates.[30]

[26] An ''Investing Fund Affiliate'' is any Investing Fund Adviser, Investing Fund Sub-Adviser, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[27] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[28] A Fund, or its respective Master Fund, may invest in a wholly-owned subsidiary, organized under the laws of the Cayman Islands as an exempted company or under the laws of another non-U.S. jurisdiction (each, a ''Wholly-Owned Subsidiary''), in order to pursue its investment objectives and/or ensure that the Fund remains qualified as a registered investment company for U.S. federal income tax purposes. Certain Wholly-Owned Subsidiaries may be investment companies or excluded from the definition of investment company by section 3(c)(1) or 3(c)(7) of the Act. For a Fund (or its respective Master Fund) that invests in a Wholly-Owned Subsidiary, the Adviser will serve as investment adviser to both the Fund (or its respective Master Fund) and the Wholly-Owned Subsidiary. A Feeder Fund will not invest in a Wholly-Owned Subsidiary.

[29] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[30] To the extent that purchases and sales of Shares occur in the secondary market and not through

19. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

20. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[31] The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

21. In addition, to the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the request for relief described above would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve ''overreaching'' by an affiliated person. Applicants represent that such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to predetermined securities and on the same terms with respect to all investors. Finally, such transaction would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants state that, in effect, the Feeder Fund will serve as a conduit through which creation and redemption orders by Authorized Participants will be effected.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund (or its respective Master Fund) that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Sub-Adviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund, or its respective Master Fund, through a transaction in which the Fund, or its respective Master Fund, could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed ETFs, other than the Master-Feeder Relief.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund (or its respective Master Fund) for which the Investing Fund Sub-Adviser or a person controlling, controlled by or under common control with the Investing Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is also intended to cover the in-kind transactions that may accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[31] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund (or its respective Master Fund) or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Adviser and any Investing Fund Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund (or its respective Master Fund) or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund (or its respective Master Fund), including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund (or its respective Master Fund) to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund (or its respective Master Fund); (ii) is within the range of consideration that the Fund (or its respective Master Fund) would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund (or its respective Master Fund) and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund (or its respective Master Fund) under rule 12b–1 under the Act) received from a Fund (or its respective Master Fund) by the Investing Fund Adviser, or Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee, or Sponsor, or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Adviser will waive fees otherwise payable to the Investing Fund Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund (or its respective Master Fund) by the Investing Fund Sub-Adviser, or an affiliated person of the Investing Fund Sub-Adviser, other than any advisory fees paid to the Investing Fund Sub-Adviser or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Adviser. In the event that the Investing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund (or its respective Master Fund)) will cause a Fund (or its respective Master Fund) to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund (or its respective Master Fund), including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund (or its respective Master Fund) in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund (or its respective Master Fund); (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund (or its respective Master Fund) in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund (or its respective Master Fund) will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided

that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund (or its respective Master Fund) in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund (or its respective Master Fund) relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, other than any Wholly-Owned Subsidiary, and except to the extent (i) permitted by exemptive relief from the Commission permitting the Fund (or its respective Master Fund) to purchase shares of other investment companies for short-term cash management purposes or (ii) the Fund acquires securities of the Master Fund pursuant to the Master-Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–01749 Filed 1–29–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74131; File No. SR–MIAX–2015–04]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend MIAX Rule 402

January 26, 2015.

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 January 16, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 Rule 402 to allow the listing of options overlying Exchange-Traded Fund Shares (''ETFs'') that are listed pursuant to generic listing standards on equities exchanges for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 402 to allow the listing of options overlying ETFs that are listed pursuant to generic listing standards on equities exchanges for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance sharing agreement (''comprehensive surveillance agreement'' or ''CSSA'') is not required.[3] This proposal will enable the Exchange to list and trade options on ETFs without a CSSA provided that the ETF is listed on an equities exchange pursuant to the generic listings standards that do not require a CSSA pursuant to Rule 19b–4(e)[4] of the Exchange Act. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.[5] In other words, the proposal will amend the listing standards to allow the Exchange to list and trade options on ETFs based on international or global indexes to a similar degree that they are allowed to be listed on several equities exchanges.[6]

Exchange-Traded Funds

The Exchange allows for the listing and trading of options on ETFs. Rule 402(i)(5)(ii)(A)–(C) provide the listings standards for options on ETFs with non-U.S. component securities, such as ETFs based on international or global indexes. Rule 402(i)(5)(ii)(A) requires that any non-U.S. component securities of an index or portfolio of securities on which the Exchange-Traded Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio.[7] Rule 402(i)(5)(ii)(B) requires that component securities of an index or portfolio of securities on which the Exchange-Traded Fund Shares are based for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index.[8] Rule 402(i)(5)(ii)(C) requires that component securities of an index or portfolio of securities on which the Exchange-Traded Fund Shares are based for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See e.g.,* NYSE MKT Rule 1000 Commentary .03(a)(B); NYSE Arca Equities Rule 5.2(j)(3) Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); and BATS Rule 14.11(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(e).

[5] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities products. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[6] *See* NYSE MKT Rule 1000 Commentary .03(a)(B); NYSE Arca Equities Rule 5.2(j)(3) Commentary .01(a)(B); NASDAQ Rule 5705(a)(3)(A)(ii); and BATS Rule 14.11(b)(3)(A)(ii). *See also* Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993 (SR–Amex–2006–78); 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR–NASDAQ–2006–050); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86).

[7] *See* Rule 402(i)(5)(ii)(A).

[8] *See* Rule 402(i)(5)(ii)(B).

do not represent 33% or more of the weight of the index.[9]

Generic Listing Standards for Exchange-Traded Funds

The Exchange notes that the Commission has previously approved generic listing standards pursuant to Rule 19b–4(e)[10] of the Exchange Act for ETFs based on indexes that consist of stocks listed on U.S. exchanges.[11] In general, the criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications as appropriate for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved the listing and trading of ETFs based on international indexes—those based on non-U.S. component stocks—as well as global indexes—those based on non-U.S. and U.S. component stocks.[12]

In approving ETFs for equities exchange trading, the Commission thoroughly considered the structure of the ETFs, their usefulness to investors and to the markets, and SRO rules that govern their trading. The Exchange believes that allowing the listing of options overlying ETFs that are listed pursuant to the generic listing standards on equities exchanges for ETFs based on international and global indexes and applying Rule 19b–4(e)[13] should fulfill the intended objective of that Rule by allowing options on those ETFs that have satisfied the generic listing standards to commence trading, without the need for the public comment period and Commission approval. The proposed rule has the potential to reduce the time frame for bringing options on ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the generic listing standards under Rule 19b–4(e)[14] would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2),[15] requesting Commission approval to list and trade options on a particular ETF.

Requirements for Listing and Trading Options Overlying ETFs Based on International and Global Indexes

Options on ETFs listed pursuant to these generic standards for international and global indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to options on ETFs and would be covered under the Exchange's surveillance program for options on ETFs.

Pursuant to proposed Rule 402(i)(E)(2)(i), the Exchange may list and trade options on an ETF without a CSSA provided that the ETF is listed pursuant to generic listing standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required. MIAX believes that these generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio.

The Exchange believes that this proposed listing standard for options on ETFs is reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, and [sic] will result in options overlying ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that allowing the Exchange to list options overlying ETFs that are listed on equities exchanges pursuant to generic standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a CSSA is not required, will result in options overlying ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in options overlying ETFs based on international or global indexes could become a surrogate for trading in unregistered securities.

The Exchange believes that ETFs based on international and global indexes that have been listed pursuant to the generic standards are sufficiently broad-based enough as to make options overlying such ETFs not susceptible instruments for manipulation. The Exchange believes that the threat of manipulation is sufficiently mitigated for underlying ETFs that have been listed on equities exchanges pursuant to generic listing standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required and for the overlying options, that the Exchange does not see the need for CSSA [sic] to be in place before listing and trading options on such ETFs. The Exchange notes that its proposal does not replace the need for a CSSA as provided in current Rule 402(i)(5)(ii). The provisions of current Rule 402(i)(5)(ii), including the need for a CSSA, remain materially unchanged in proposed Rule 402(i)(E)(2)(ii) and will continue to apply to options on ETFs that are not listed on an equities exchange pursuant to generic listing standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required. Instead, proposed Rule 402(i)(E)(2)(i) adds an additional listing mechanism for certain qualifying options on ETFs to be listed on the Exchange.

Finally, the Exchange proposes several technical changes to the formatting of Rule 402(i), including relocating current Rule 402(i)(5)(ii)(E) to proposed Rule 402(i)(E)(1)(iii) and the re-numbering of current Rule 402(i)(5)(ii) to proposed Rule 402(i)(E)(2)(ii). In addition, the Exchange proposes making corrections to inaccurate citations located in Rule 403(g)(1) and (2), so that Rule 403(g)(1) properly cites to Rule 402(i)(E)(1)(i) regarding closed-end ETFs and Rule 403(g)(2) properly cites to Rule 402(i)(E)(1)(ii) regarding open-end ETFs. The Exchange believes that these technical changes are necessary for Rule 402(i) and Rule 403(g) to correspond with other option exchanges.[16]

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rules have the potential to

[9] *See* Rule 402(i)(5)(ii)(C).

[10] 17 CFR 240.19b–4(e).

[11] *See* Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A. *See also* Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000).

[12] *See, e.g.,* Securities Exchange Act Release Nos. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (approving the listing and trading of certain Vanguard International Equity Index Funds); 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (approving the listing and trading of series of the iShares Trust based on certain S&P global indexes).

[13] 17 CFR 240.19b–4(e).

[14] 17 CFR 240.19b–4(e).

[15] 15 U.S.C. 78s(b)(2).

[16] *See i.e.,* NYSE Arca Rule 5.3(g).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

reduce the time frame for bringing options on ETFs to market, thereby reducing the burdens on issuers and other market participants. The Exchange also believes enabling the listing and trading of options on ETFs pursuant to this new listing standard will benefit investors by providing them with valuable risk management tools. The Exchange notes that its proposal does not replace the need for a CSSA as provided in current Rule 402(i)(5)(ii). The provisions of current Rule 402(i)(5)(ii), including the need for a comprehensive surveillance sharing agreement, remain materially unchanged in proposed Rule 402(i)(E)(2)(ii) and will continue to apply to options on ETFs that are not listed on an equities exchange pursuant to generic listing standards for series of portfolio depositary receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement is not required. Instead, proposed Rule 402(i)(E)(2)(i) adds an additional listing mechanism for certain qualifying options on ETFs to be listed on the Exchange in a manner that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes this proposed rule change will benefit investors by providing additional methods to trade options on ETFs, and by providing them with valuable risk management tools. Specifically, the Exchange believes that market participants on MIAX would benefit from the introduction and availability of options on ETFs in a manner that is similar to equities exchanges and will provide investors with a venue on which to trade options on these products. For all the reasons stated above, 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, and believes the proposed change will enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2015–04 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–MIAX–2015–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2015–04 and should be submitted on or before February 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2015–01748 Filed 1–29–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74135; File No. SR–C2–2015–001]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

January 26, 2015.

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 January 14, 2015, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[19] 17 CFR 200.30–3(a)(12).

[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 Fees Schedule.[3] First, the Exchange proposes to amend Taker fees for simple, non-complex orders in all multiply-listed index, ETF and ETN options classes (except RUT). Currently, for such orders, the Exchange assesses a fee of $0.44 for Public Customers and $0.45 to C2 Market-Makers as well as orders from all other origins. The Exchange proposes to increase these fee amounts by $0.03 for all market participants, resulting in a fee of $0.47 per contract for Public Customer orders and $0.48 per contract for orders from C2 Market-Makers and all other origins. The reason for the proposed change is for competitive reasons. Additionally, the Exchange notes that the proposed fee amounts are equivalent to, and in some cases lower than, those assessed for similar orders by other exchanges.[4]

The Exchange also proposes to raise, from $0.35 per contract to $0.45 per contract, the Taker fee for complex orders from C2 Market-Makers and all other origins (Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.) except Public Customers in multiply-listed index, ETF and ETN options classes (except RUT). The Exchange desires to impose this increase on orders from C2 Market-Makers and all other origins and not on Public Customers due to market forces. The Exchange notes that Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to Public Customers. Finally, the proposed fee amount is in the range of, and in some cases much lower than, those assessed for similar orders by other exchanges.[5]

The Exchange proposes to adopt a new fees structure for simple, non-complex orders in equity options classes. Currently, the Exchange's fees and rebates for such orders are determined by formulas that take into account factors such as the C2 BBO Market Width, type of market participant, and size of the order. The Exchange proposes to eliminate that fees structure and replace it with a more traditional, simple Maker/Taker fee and rebate structure, one that mirrors the structure (and even the fee amounts) of that which applies to simple, non-complex orders in multiply-listed index, ETF and ETN options classes. The proposed new Section 1B of the Exchange Fees Schedule would describe this new structure as follows:

The following rates apply to simple, non-complex orders in all equity options classes. Listed rates are per contract.

	Maker	Taker fee
Public Customer	* ($.37)	$.47
C2 Market-Maker	* ($.40)	$.48
All Other Origins (Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.)	* ($.35)	$.48
Trades on the Open	$.00	$.00

* Rebates do not apply to orders that trade with Public Customer complex orders. In such a circumstance, there will be no fee or rebate.

The Exchange believes that this proposed new fee and rebate structure will make it easier for market participants to determine what their fees will be. The Exchange also believes that the proposed new structure will better allow the Exchange to compete for, and attract more, trading flow. The rebates offered are intended to incentivize C2 Market-Makers to quote competitively on the Exchange and to attract market participants to send orders to the Exchange, which will then incent Takers to trade with those orders and quotes. The differences between the Maker rebates and Taker fees are intended to cover the costs associated with operating the Exchange's trading systems necessary to provide these trading opportunities. Further, the amounts of these rebates and fees are as, or more, beneficial to C2 market participants in many circumstances as those offered on other exchanges.[6] The Exchange proposes to not provide a rebate to simple orders in equity options that trade with Public Customer complex orders in equity options because the Exchange also proposes to provide a rebate for Public Customer complex orders, and it would not be economically feasible or viable to provide a rebate on an order that is trading with an order that is not generating a fee (as this would result in a net negative for the Exchange). In such a circumstance, there will be no fee or rebate.

The Exchange also proposes to adopt a new fees structure for complex orders in equity options classes. Currently, Section 1D of the Exchange Fees Schedule states: ''For all complex order transactions in equity options classes, all components of such transactions (including simple, non-complex orders and/or quotes that execute against a complex order) will be assessed no fee (or rebate).'' The Exchange proposes to delete this language and instead adopt a Maker/Taker fee and rebate structure for complex orders in equity options

[3] C2 initially filed the proposed fee change on December 31, 2014 (SR–C2–2014–030). On January 14, 2015, C2 withdrew that filing and submitted this filing. All fee amounts described herein are per contract unless otherwise noted.

[4] *See* The NASDAQ Stock Market LLC NASDAQ Options Market (''NOM'') Price List, which lists fees for Customer orders that remove liquidity in Penny Pilot options at $0.48 per contract and non-Penny Pilot options at $0.85 per contract, and for non-Customer orders that remove liquidity in Penny Pilot options at $0.49 per contact and non-Penny Pilot options at $0.89 per contract.

[5] *See* NOM Price List, which lists fees for orders from market participants other than Customers that remove liquidity in Penny Pilot options at $0.49 per contract and non-Penny Pilot options at $0.89 per contract.

[6] *See* NYSE Arca, Inc. (''NYSE Arca'') Options Fee Schedule, which lists, for electronic executions in Penny Pilot issues, 1) the standard Customer Maker rebate of $0.25 per contract versus a Taker fee of $0.47, 2) the standard NYSE Arca Market Maker Maker rebate of $0.28 versus a Taker fee of $0.49, and 3) the standard Firm and Broker Dealer Maker rebate of $0.10 versus a Taker fee of $0.49; and for electronic executions in non-Penny Pilot issues, 1) the standard Customer Maker rebate of $0.75 versus a Taker fee of $0.85, 2) the standard NYSE Arca Market Maker Maker rebate of $0.05 versus a Taker fee of $0.87, and 3) the standard Firm and Broker Dealer Maker fee of $0.50 versus a Taker fee of $0.89 (it should be noted that all fee and rebate amounts described in this footnote are the standard amounts listed on the NYSE Arca Options Fee Schedule and do not take into account any NYSE Arca programs that provide rebates or credits to NYSE Arca market participants based on volume transacted on NYSE Arca or other such NYSE Arca programs).

classes, one that mirrors the structure (and even the fee amounts) of that which applies to complex orders in multiply-listed index, ETF and ETN options classes. The following rates apply to complex orders in equity options classes. Listed rates are per contract.

	Maker fee/ (rebate)	Taker fee/ (rebate)
Public Customer	* ($.35)	* ($.35)
C2 Market-Maker	$.10	$.45
All Other Origins (Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.)	$.20	$.45
Trades on the Open	$.00	$.00

The purpose of this change is to align and improve the Exchange's competitive position in relation to other exchanges. Additionally, the Exchange proposes to denote in an asterisk on the Fees Schedule that the rebate will only apply to Public Customer complex orders that trade with non-Public Customer complex orders. In other circumstances, there will be no Maker or Taker fee or rebate. This is because, if the Exchange offered the rebate when a Public Customer complex order trades with another Public Customer complex order, the Exchange would be providing a rebate on both sides of the order. It would not be economically feasible or viable to provide a rebate on an order that is trading with an order that is not generating a fee (as this would result in a net negative for the Exchange). Finally, the amounts of these rebates and fees are as, or more, beneficial to C2 market participants in many circumstances as those offered on other exchanges.[7]

Just as the Exchange handles complex orders in multiply-listed index, ETF and ETN options classes, for transactions in which simple, non-complex orders execute against a complex order, each component of the complex order will be assessed the complex order fees listed in Section 1D of this Fees Schedule, while the simple, non-complex orders will be assessed the transaction fees listed in Section 1B of this Fees Schedule. For transactions in which a complex order executes against another complex order, each component of the complex order will be assessed the complex order fees listed in Section 1D of this Fees Schedule. This follows common sense; when a market participant submits an order, he likely does not know whether it will trade with a simple or complex order, and should get assessed the fee amount applicable to the type of order he submits, regardless of what type of order with which it trades.

As with complex orders in multiply-listed index, ETF and ETN options classes, for executions that occur within the Complex Order Auction (''COA'') against auction responses, the incoming/auctioned order is considered maker, and auction responses are considered taker. This is because the incoming/auctioned order is the one creating trading interest, and the response is taking that interest.

For the newly-proposed fees structures that apply to both simple and complex orders in equity options, the Exchange proposes to assess no fees and offer no rebates for Trades on the Open. Trades on the Open involve the matching of undisplayed pre-opening trading interest. As such, there is, in effect, no Maker or Taker activity occurring. The Exchange would like to encourage users to submit pre-opening orders. The Exchange also does not assess fees or offer rebates for Trades on the Open in multiply-listed index, ETF and ETN options classes (for both simple and complex orders).

The Exchange also proposes to raise the PULSe On-Floor Workstation (''PULSe'') fee. Currently, the Exchange charges a fee of $350 per month for the first 10 users of a Permit Holder workstation and $100 per month for all subsequent users. Permit Holders may also make the workstation available to their customers, which may include non-broker dealer public customers and non-Permit Holder broker dealers (referred to herein as ''non-Permit Holders''). For such non-Permit Holders workstations, the Exchange charges a fee of $350 per month per workstation. The Exchange proposes raising the PULSe On-Floor Workstation fee from $350 per month to $400 per month for both Permit Holder and non-Permit Holder workstations. The Exchange expended significant resources developing PULSe, and intends to recoup some of those costs.

As the Exchange proposes to amend the Fees Schedule to set transaction fees and rebates for equity options at the same rates as those for multiply-listed index, ETF and ETN options classes, the Exchange therefore also proposes to standardize Linkage Routing fees for equity options and multiply-listed index, ETF and ETN options. Currently, Section 2 of the Exchange Fees Schedule states that $0.65 per routed contract in addition to applicable C2 taker fee (excluding Public Customer orders in equity options classes). For Public Customer orders in equity options classes, C2 shall pass through the actual transaction fee assessed by the exchange(s) to which the order was routed. In order to achieve the above-mentioned standardization, as well as cover the costs associated with managing the Exchange's Linkage systems and processes, the Exchange proposes to delete the language that excludes Public Customer orders in equity classes from the stated fee that applies to all other Linkage routing and provides a separate fee structure for such orders.[8] Going forward, the Exchange proposes to merely state in Section 2 of the Fees Schedule that the Linkage Routing fee will be ''$0.65 per routed contract in addition to applicable C2 taker fee.''

Finally, as of January 2, 2015, the Exchange no longer lists Mini-Options. Accordingly, the Exchange proposes to delete from the Fees Schedule all references to Mini-Options, as such references are no longer necessary and will be obsolete.

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.[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,

[7] *See* Boston Options Exchange LLC (''BOX'') Fee Schedule, Section III, which denotes that BOX Market-Makers can pay anywhere from $0.10 to $0.80 for a complex order execution (depending on the type of order it executes against and the options class), with most described fees listed at least $0.40, and orders from all other origins (not including Public Customers) can pay anywhere from $0.20 to $0.80 for a complex order execution (depending on the type of order it executes against and the options class), with most described fees listed at least $0.40 and a few listed at $0.80. *See also* NASDAQ OMX PHLX LLC (''PHLX'') Pricing Schedule, Section II, under which Public Customers receive no rebate for complex order executions in multiply-listed equity options.

[8] As such, the Exchange proposes to delete the language ''(excluding Public Customer orders in equity options classes). For Public Customer orders in equity options classes, C2 shall pass through the actual transaction fee assessed by the exchange(s) to which the order was routed'' from Section 2 of the Fees Schedule.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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 Section 6(b)(4) of the Act,[11] 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.

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Public Customers as compared to other market participants and to provide higher rebates to Public Customers as compared to other market participants other than Market-Makers in some circumstances because as noted above, Public Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Public Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The fees and rebates offered to Public Customers are intended to attract more Public Customer trading volume to the Exchange. Moreover, the options industry has a long history of providing preferential pricing to Public Customers, and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of many other exchanges. Finally, all fee amounts listed as applying to Public Customers will be applied equally to all Public Customers (meaning that all Public Customers will be assessed the same amount).

The Exchange believes that it is equitable and not unfairly discriminatory to, in some circumstances, assess lower fees to Market-Makers as compared to other market participants other than Public Customers and provide higher rebates to C2 Market-Makers as compared to other market participants because C2 Market-Makers, unlike other C2 market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, these lower fees and higher rebates offered to C2 Market-Makers are intended to incent C2 Market-Makers to quote and trade more on C2, thereby providing more trading opportunities for all C2 market participants. Finally, all fee amounts listed as applying to C2 Market-Makers will be applied equally to all C2 Market-Makers (meaning that all C2 Market-Makers will be assessed the same amount). This concept also applies to orders from all other origins. It should also be noted that all fee amounts described herein are intended to attract greater order flow to the Exchange, which should therefore serve to benefit all Exchange market participants.

The Exchange believes that the proposed increases to Taker fees for simple, non-complex orders in all multiply-listed index, ETF and ETN options classes (except RUT) are reasonable because the proposed fee amounts are equivalent to, and in some cases lower than, those assessed for similar orders by other exchanges.[12]

The Exchange believes that the proposed increase in the Taker fee for complex orders from C2 Market-Makers and all other origins (Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.) except Public Customers in multiply-listed index, ETF and ETN options classes (except RUT) is reasonable, equitable, and not unfairly discriminatory because the proposed fee amount is in the range of, and in some cases much lower than, those assessed for similar orders by other exchanges.[13]

The Exchange believes that the proposed new fee and rebate structure for simple, non-complex orders in equity options is reasonable, equitable and not unfairly discriminatory because the Exchange also believes that the proposed new structure will better allow the Exchange to compete for, and attract more, trading flow, which will benefit all C2 market participants. The rebates offered are intended to encourage C2 Market-Makers to quote more often and attract market participants to send orders to the Exchange, which will then incent Takers to trade with those orders and quotes. The Exchange believes that the proposed new fee and rebate structure is also reasonable because it may make it easier for market participants to determine what their fees will be. The Exchange believes that the differences between the Maker rebates and Taker fees are reasonable, equitable and not unfairly discriminatory because they are intended to cover the costs associated with operating the Exchange's trading systems necessary to provide these trading opportunities. Further, the amounts of these rebates and fees are as, or more, beneficial to C2 market participants in many circumstances as those offered on other exchanges.[14] The Exchange believes that its proposal to not provide a rebate for simple orders in equity options that trade with Public Customer complex orders in equity options is reasonable, equitable and not unfairly discriminatory because the Exchange also proposes to provide a rebate for Public Customer complex orders, and it would not be economically feasible or viable to provide a rebate on an order that is trading with an order that is not generating a fee (as this would result in a net negative for the Exchange). Finally, the Exchange believes that the proposed new fee and rebate structure for simple, non-complex orders in equity options is equitable and not unfairly discriminatory because the structure and fee amounts are identical to those which apply to simple, non-complex orders in multiply-listed index, ETF and ETN options classes.

The Exchange believes that the proposed new fee and rebate structure for complex orders in equity options is reasonable, equitable and not unfairly discriminatory because the Exchange also believes that the lower fees for C2 Market-Maker orders as compared to other market participants other than Public Customers will encourage C2 Market-Makers to quote more often and send more orders to the Exchange, thereby providing more liquidity and trading opportunities for other market participants. The Exchange believes that offering a rebate for Public Customer

[11] 15 U.S.C. 78f(b)(4).

[12] *See* NOM Price List, which lists fees for Customer orders that remove liquidity in Penny Pilot options at $0.48 per contract and non-Penny Pilot options at $0.85 per contract, and for non-Customer orders that remove liquidity in Penny Pilot options at $0.49 per contact and non-Penny Pilot options at $0.89 per contract.

[13] *See* NOM Price List, which lists fees for orders from market participants other than Customers that remove liquidity in Penny Pilot options at $0.49 per contract and non-Penny Pilot options at $0.89 per contract.

[14] *See* NYSE Arca Options Fee Schedule, which lists, for electronic executions in Penny Pilot issues, (1) the standard Customer Maker rebate of $0.25 per contract versus a Taker fee of $0.47, (2) the standard NYSE Arca Market Maker Maker rebate of $0.28 versus a Taker fee of $0.49, and (3) the standard Firm and Broker Dealer Maker rebate of $0.10 versus a Taker fee of $0.49; and for electronic executions in non-Penny Pilot issues, (1) the standard Customer Maker rebate of $0.75 versus a Taker fee of $0.85, (2) the standard NYSE Arca Market Maker Maker rebate of $0.05 versus a Taker fee of $0.87, and (3) the standard Firm and Broker Dealer Maker fee of $0.50 versus a Taker fee of $0.89 (it should be noted that all fee and rebate amounts described in this footnote are the standard amounts listed on the NYSE Arca Options Fee Schedule and do not take into account any NYSE Arca programs that provide rebates or credits to NYSE Arca market participants based on volume transacted on NYSE Arca or other such NYSE Arca programs).

complex orders, whether Maker or Taker, will attract Public Customer orders to the Exchange. Since other market participants prefer to trade with Public Customer orders, this will in turn attract other market participants to send orders to the Exchange. The Exchange believes that the differences between the Maker and Taker fees are reasonable, equitable and not unfairly discriminatory because they are intended to cover the costs associated with operating the Exchange's trading systems necessary to provide these trading opportunities. The Exchange believes that not offering a rebate to Public Customer complex orders that trade with other Public Customer orders is reasonable, equitable and not unfairly discriminatory because this would result in the Exchange providing a rebate on both sides of a transaction, and it would not be economically feasible or viable to provide a rebate on an order that is trading with an order that is not generating a fee (as this would result in a net negative for the Exchange). Further, the amounts of these rebates and fees are as, or more, beneficial to C2 market participants in many circumstances as those offered on other exchanges.[15] Finally, the Exchange believes that the proposed new fee and rebate structure for complex orders in equity options is equitable and not unfairly discriminatory because the structure and fee amounts are identical to those which apply to complex orders in multiply-listed index, ETF and ETN options classes.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess no fee and provide no rebate for Trades on the Open in equity options, both simple and complex orders, because this is in line with the treatment of Trades on the Open in multiply-listed index, ETF and ETN options classes. Further, all market participants will be subject to this same treatment.

The Exchange believes increasing the PULSe fee from $350 per month to $400 per month for the first 10 users of a Permit Holder workstation and from $350 to $400 per month per workstation for non-Permit Holder workstations is reasonable because the Exchange expended significant resources developing PULSe and desires to recoup some of those costs. This change is equitable and not unfairly discriminatory because all market participants who desire to use PULSe will be assessed the same fee.

The Exchange believes that deleting the exception for Public Customer equity options orders from the standard Linkage Routing fee is reasonable because, while this change removes an exception, it merely makes Linkage Routing fees the same amount for all orders sent through the Linkage, regardless of the type of market participant sending the order or product. Indeed, this $0.65 fee amount (plus applicable Taker fee) is reasonable because it is the amount that is currently being assessed to all market participants for all other orders, including to Public Customers for orders in multiply-listed index, ETF and ETN options classes. Similarly, the Exchange believes the proposed change is equitable and not unfairly discriminatory because it will standardize the Linkage Routing fee, meaning that this fee structure will apply to all C2 market participants trading both options and multiply-listed index, ETF and ETN options classes.

Finally, the Exchange believes removing all references to Mini-Options, which have been delisted, maintains clarity in the Fees Schedule and promotes just and equitable principles of trade by eliminating potential confusion and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any circumstances in which the Exchange assesses a lower fee, or provides a higher rebate, to Public Customers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because Public Customers order flow as discussed above enhances liquidity on the Exchange for the benefit of all market participants.. These lower fees and higher rebates offered to Public Customers are intended to attract more Public Customer trading volume to the Exchange. This, in turn, would increase liquidity and trading opportunities for other market participants on C2, and provide these other market participants with greater opportunity to trade with Public Customer orders. Therefore, the Exchange believes that these lower fees and higher rebates for Public Customers should serve to benefit all C2 market participants. Moreover, the options industry has a long history of providing preferential pricing to Public Customers, and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of many other exchanges. Finally, all fee amounts listed as applying to Public Customers will be applied equally to all Public Customers (meaning that all Public Customers will be assessed the same amount).

The Exchange does not believe that any circumstances in which the Exchange assesses a lower fee, or provides a higher rebate, to C2 Market-Makers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because C2 Market-Makers, unlike other C2 market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, these lower fees and higher rebates offered to C2 Market-Makers are intended to incent C2 Market-Makers to quote and trade more on C2, thereby providing more trading opportunities for all C2 market participants. Finally, all fee amounts listed as applying to C2 Market-Makers will be applied equally to all C2 Market-Makers (meaning that all C2 Market-Makers will be assessed the same amount). This concept also applies to orders from all other origins.

The Exchange does not believe that the proposed increases to Taker fees for simple, non-complex orders in all multiply-listed index, ETF and ETN options classes (except RUT) will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because they only apply to trading on the Exchange. Further, these proposed fee amounts are equivalent to, and in some cases lower than, those assessed for similar orders by other exchanges[16], and therefore shall continue to encourage competition.

[15] *See* BOX Fee Schedule, Section III, which denotes that BOX Market-Makers can pay anywhere from $0.10 to $0.80 for a complex order execution (depending on the type of order it executes against and the options class), with most described fees listed at at least $0.40, and orders from all other origins (not including Public Customers) can pay anywhere from $0.20 to $0.80 for a complex order execution (depending on the type of order it executes against and the options class), with most described fees listed at at least $0.40 and many [sic] listed at $0.80. *See also* PHLX Pricing Schedule, Section II, under which Public Customers receive no rebate for complex order executions in multiply-listed equity options.

[16] *See* NOM Price List, which lists fees for Customer orders that remove liquidity in Penny Pilot options at $0.48 per contract and non-Penny Pilot options at $0.85 per contract, and for non-Customer orders that remove liquidity in Penny Pilot options at $0.49 per contact and non-Penny Pilot options at $0.89 per contract.

The Exchange does not believe that the proposed increase in the Taker fee for complex orders from C2 Market-Makers and all other origins (Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.) except Public Customers in multiply-listed index, ETF and ETN options classes (except RUT) will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on the Exchange. Further, the proposed fee amount is in the range of, and in some cases much lower than, those assessed for similar orders by other exchanges,[17] and therefore should continue to encourage competition.

The Exchange does not believe that the proposed new fee and rebate structure for simple orders in equity options will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on the Exchange. The Exchange also believes that the proposed new structure will better allow the Exchange to compete for, and attract more, trading flow, thereby enhancing competition. Along those lines, the amounts of these rebates and fees are as, or more, beneficial to C2 market participants in many circumstances as those offered on other exchanges.[18]

The Exchange does not believe that the proposed new fee and rebate structure for complex orders in equity options will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on the Exchange. The Exchange also believes that the proposed new structure will better allow the Exchange to compete for, and attract more, trading flow, thereby enhancing competition.

The Exchange does not believe that the proposal to assess no fees and provide no rebates for Trades on the Open because will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on the Exchange. The Exchange does not believe that this proposal will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it applies equally to all market participants.

The Exchange does not believe that the proposed change to the Linkage Routing fee will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the new proposed fee structure will apply to all market participants. The Exchange does not believe that the proposed change to the Linkage Routing fee will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on the Exchange and orders sent from the Exchange to other exchanges via Linkage.

Should any of the proposed changes make C2 a more attractive trading venue for market participants at other exchanges, such market participants may elect to become market participants at C2.

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 [19] and paragraph (f) of Rule 19b–4 [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 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–C2–2015–001 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–C2–2015–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2015–001 and should be submitted on or before February 20, 2015.

[17] *See* NOM Price List, which lists fees for orders from market participants other than Customers that remove liquidity in Penny Pilot options at $0.49 per contract and non-Penny Pilot options at $0.89 per contract.

[18] *See* NYSE Arca Options Fee Schedule, which lists, for electronic executions in Penny Pilot issues, (1) the standard Customer Maker rebate of $0.25 per contract versus a Taker fee of $0.47, (2) the standard NYSE Arca Market Maker Maker rebate of $0.28 versus a Taker fee of $0.49, and (3) the standard Firm and Broker Dealer Maker rebate of $0.10 versus a Taker fee of $0.49; and for electronic executions in non-Penny Pilot issues, (1) the standard Customer Maker rebate of $0.75 versus a Taker fee of $0.85, (2) the standard NYSE Arca Market Maker Maker rebate of $0.05 versus a Taker fee of $0.87, and (3) the standard Firm and Broker Dealer Maker fee of $0.50 versus a Taker fee of $0.89 (it should be noted that all fee and rebate amounts described in this footnote are the standard amounts listed on the NYSE Arca Options Fee Schedule and do not take into account any NYSE Arca programs that provide rebates or credits to NYSE Arca market participants based on volume transacted on NYSE Arca or other such NYSE Arca programs).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–01754 Filed 1–29–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74133; File No. SR–ICEEU–2015–003]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Related to New Haircuts

January 26, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 23, 2015, ICE Clear Europe Limited (''ICE Clear Europe'') 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 ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to modify the cross-currency haircuts applied by ICE Clear Europe to Permitted Cover provided by Clearing Members in order to address recent volatility in Swiss franc (''CHF'') exchange rates. The Clearing House has determined to modify the CHF cross-currency haircuts as follows:

PROPOSED CHF CROSS CURRENCY HAIRCUTS

Currency pair	Current haircut (%)	Proposed haircut (%)
CHF–CAD	10.00	16.00
CHF–CZK	6.00	17.25
CHF–DKK	6.00	17.25
CHF–EUR	10.00	17.25
CHF–GBP	10.00	16.25
CHF–HUF	6.00	17.25
CHF–JPY	6.00	16.25
CHF–NOK	6.00	14.75
CHF–PLN	6.00	18.50
CHF–SEK	8.00	16.00
CHF–TRY	6.00	17.50
CHF–USD	10.00	15.75
CHF–ZAR	6.00	19.75

[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, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. ICE Clear Europe 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

1. Purpose

Under its existing margin and haircut methodology, ICE Clear Europe imposes an additional haircut, referred to as a ''cross-currency haircut,'' with respect to assets provided by Clearing Members as Permitted Cover for margin obligations where the Permitted Cover is denominated in a different currency from that of the relevant margin requirement. The cross-currency haircut is designed to protect the Clearing House against exchange rate risk in the event it needs to liquidate the Permitted Cover and convert the proceeds into the currency of the relevant underlying obligation following a Clearing Member default.[3]

As has been publicly reported, on January 15, 2015, the Swiss central bank discontinued a policy establishing a minimum exchange rate of 1.20 Swiss francs per Euro. Very large moves in Swiss franc exchange rates followed that decision, with the result that the Swiss franc appreciated approximately 16–17% on that day against other major currencies such as the US dollar, Euro and British pound. Because that level of appreciation exceeded the existing cross-currency haircut of 10% applied by the Clearing House for those currency pairs, the Clearing House, consistent with its internal policies, reviewed the cross-currency haircut levels for all relevant Swiss franc currency pairs. As a result of that review, the Clearing House determined to modify the CHF cross-currency haircuts as set forth in Item I above.

In reviewing the haircuts, the Clearing House applied, consistent with its policies and practices, a value at risk model under both parametric and historical simulation methods, taking into account both recent volatility and historical volatility, and looking at both one and two day liquidation period assumptions for the relevant Permitted Cover.

2. Statutory Basis

ICE Clear Europe believes that the change in CHF cross-currency haircuts is consistent with the requirements of Section 17A of the Act[4] and the regulations thereunder applicable to it, and in particular, is consistent with the prompt and accurate clearance of and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[5] ICE Clear Europe is proposing the change in response to a significant recent increase in the volatility of CHF exchange rates as observed in the market. The Clearing House has determined, based on the application of its internal policies and value at risk models, that the proposed increase in cross-currency haircuts is appropriate to protect the Clearing House against currency risk where Clearing Members provide Permitted Cover in one currency to cover margin obligations in a different currency. The change thus enhances the Clearing House's risk management, margin framework and financial resources to support its clearing operations in the event of Clearing Member default. As a result, ICE Clear Europe believes that the change will facilitate the prompt and accurate clearance and settlement of securities and derivatives transactions, and promote the public interest and the protection of investors, within the meaning of Section 17A(b)(3)(F) of the Act.[6]

[3] Current cross-currency haircuts are set out in the List of Permitted Cover and Limits on Collateral published on the Clearing House's Web site, *https://www.theice.com/publicdocs/clear_europe/list-of-permitted-covers.pdf.*

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change will apply to all Clearing Members and market participants that provide Permitted Cover in circumstances where a CHF cross-currency haircut applies. ICE Clear Europe does not believe the change will have a material effect on access to clearing or the ability of Clearing Members and other market participants to obtain clearing services, or limit market participants' choices for clearing contracts. Although the increased haircuts may increase the cost of using certain types of Permitted Cover, ICE Clear Europe believes that such costs are warranted by the increased CHF exchange rate risk presented to the Clearing House. As a result, ICE Clear Europe believes that any impact on competition is appropriate 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

Written comments relating to the proposed changes have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2015–003 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–ICEEU–2015–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2015–003 and should be submitted on or before February 20, 2015.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b)(2)(C) of the Act[7] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[8] requires, among other things, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and, in general, to protect investors and the public interest.

The Commission finds that the proposed revisions to the Swiss franc cross-currency haircuts are consistent with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder applicable to ICE Clear Europe. ICE Clear Europe proposes to revise the cross-currency haircut levels for all relevant Swiss franc currency pairs in response to increased volatility in Swiss franc exchange rates, which has resulted in appreciation of the Swiss franc exceeding the existing cross-currency haircuts applied to its Swiss franc currency pairs. The revised haircuts, which were determined using risk-based models and parameters, are intended to protect ICE Clear Europe from exchange rate risk in the event it needs to liquidate relevant Permitted Cover and convert the proceeds into the currency of the relevant underlying obligation following the default of a Clearing Member. The Commission therefore believes that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, and, in general, to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act[10] and the rules and regulations thereunder.

ICE Clear Europe has requested that the Commission approve the proposed rule change on an accelerated basis for good cause shown. ICE Clear Europe states that the proposed rule change is intended to address a recent market development resulting in substantially increased volatility in Swiss franc exchange rates. ICE Clear Europe believes that in light of these developments, it is necessary to increase the Swiss franc cross-currency haircuts as set forth herein in order to appropriately manage the currency risks from Permitted Cover provided to the Clearing House. ICE Clear Europe further believes that a delay in implementation of the proposed changes could adversely affect its risk management and unnecessarily expose the Clearing House to increased currency risk if it were necessary to liquidate Permitted Cover in the event of a Clearing Member default. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,[11] for approving the proposed rule change on an accelerated basis.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78s(b)(2)(C)(iii).

Act[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–ICEEU–2015–003) be, and hereby is, approved on an accelerated basis.[14]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–01752 Filed 1–29–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74136; File No. SR–OCC–2015–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Concerning a Proposed Capital Plan for Raising Additional Capital That Would Support the Options Clearing Corporation's Function as a Systemically Important Financial Market Utility

January 26, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2015, The Options Clearing Corporation (''OCC'') 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 OCC.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC also filed proposals in this proposed rule change as an advance notice under Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010. 12 U.S.C. 5465(e)(1). *See* File No. SR–OCC–2014–813. In Items I and II below, OCC states that the purpose of this proposal is in part to facilitate compliance with the SEC Proposed Rules (as defined below) and address Principle 15 of the Principles for Financial Market Infrastructures. The Commission notes that the SEC Proposed Rules are pending. The Commission will evaluate the proposed rule change under the Act and the rules currently in force thereunder.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change is filed by OCC in order to set forth a proposed Capital Plan for raising additional capital that would support OCC's function as a systemically important financial market utility and facilitate OCC's compliance with new regulatory requirements applicable to systemically important financial market utilities that have been proposed by the Commission but have not yet been adopted.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OCC is proposing to amend its By-Laws and other governing documents, and to adopt certain policies, for the purpose of implementing a plan for raising additional capital (''Capital Plan'') under which the options exchanges that own equity in OCC (''Stockholder Exchanges'' or ''Stockholders'') would make an additional capital contribution and commit to replenishment capital (''Replenishment Capital'') in circumstances discussed below, and would receive, among other things, the right to receive dividends from OCC.[4] In addition to the additional capital contribution and Replenishment Capital, the main features of the Capital Plan are: (i) A policy establishing OCC's fees at a level that would be sufficient to cover OCC's estimated operating expenses plus a ''Business Risk Buffer'' as described below (''Fee Policy''), (ii) a policy establishing the amount of the annual refund to clearing members of OCC's fees (''Refund Policy''), and (iii) a policy for calculating the amount of dividends to be paid to the Stockholder Exchanges (''Dividend Policy''). The Capital Plan is proposed to be implemented on or about February 27, 2015, subject to all necessary regulatory approvals.[5]

The Capital Plan would significantly increase OCC's capital in connection with its increased responsibilities as a systemically important financial market utility, and OCC believes that it would facilitate OCC's compliance with new regulatory requirements applicable to such systemically important financial market utilities that have been proposed by the Commission but have not yet been adopted.[6] For purposes of its capital planning, OCC has used the working assumption that the new requirements contained in the Commission's proposed amendments to Rule 17Ad–22 of the SEC Proposed Rules will be adopted substantially as proposed, and the Capital Plan is intended to ensure OCC's ability to comply with Rule 17Ad–22, specifically paragraph (e)(15) thereof, when the SEC Proposed Rules become effective. In addition, it is intended to address Principle 15 of the Principles for Financial Market Infrastructures published by the Bank for International Settlements and the International Organization of Securities Commissions, which provides, among other things, that a financial market utility should identify, monitor and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue to operate as a going concern. The Capital Plan calls for an infusion of substantial additional equity capital by the Stockholder Exchanges to be made prior to February 27, 2015, subject to regulatory approval, that when added to retained earnings accumulated by OCC in 2014 will significantly increase OCC's capital levels as compared to historical levels. Additionally, the Capital Plan includes the Replenishment Capital commitment, which would provide OCC access to additional equity contributed by the Stockholder Exchanges should OCC's equity fall close to or below the amount that OCC determines to be appropriate to support its business and manage business risk in compliance with Rule 17Ad–22, as discussed more fully below.

[4] The Capital Plan has also been filed with the Commission as an advance notice (SR–OCC–2014–813), which was amended and restated on January 14, 2015.

[5] The material features of the Capital Plan are summarized in the Term Sheet that is included as Exhibit 3 to this filing. Certain details of the Term Sheet may change as a result of negotiations between OCC and the Stockholder Exchanges or changes in financial figures, but OCC does not anticipate any material changes to the Capital Plan.

[6] *See* Securities Exchange Act Release No. 71699 (March 12, 2014), 79 FR 29507 (May 22, 2014) (''SEC Proposed Rules'').

Background

OCC is a clearing agency registered with the Commission and is also a derivatives clearing organization (''DCO'') regulated in its capacity as such by the Commodity Futures Trading Commission (''CFTC''). OCC is a Delaware business corporation and is owned equally by the Stockholder Exchanges, five national securities exchanges for which OCC provides clearing services.[7] In addition, OCC provides clearing services for seven other national securities exchanges that trade options (''Non-Stockholder Exchanges''). In its capacity as a DCO, OCC also provides clearing services to four futures exchanges.

OCC has been designated systemically important by the Financial Stability Oversight Council pursuant to the Payment, Clearing and Settlement Supervision Act, and the Commission is OCC's ''Supervisory Agency'' under Section 803(8) of the Payment, Clearing and Settlement Supervision Act. OCC is therefore a ''covered clearing agency'' (''CCA'') as defined in proposed amendments to the Commission's Rule 17Ad–22(a)(7) and would be required to comply with the provisions of proposed Rule 17Ad–22 applicable to CCA's, including paragraph (e)(15) thereof.[8]

Proposed Rule 17Ad–22(e)(15) provides:

> Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: . . . Identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by:
>
> (i) Determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken;
>
> (ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which:
>
> (A) shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraph (e)(4)(i)–(iii) of this section, as applicable, and the liquidity risk standard in paragraph (e)(7)(i) and (ii) of this section; and
>
> (B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including adverse market conditions; and
>
> (iii) Maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.[9]

Over the last nine months, OCC has devoted substantial efforts to: (1) Develop a 5-year forward looking model of expenses; (2) quantify maximum recovery and wind-down costs under OCC's Recovery and Wind-Down Plan; (3) assess and quantify OCC's operational and business risks; (4) model projected capital accumulation taking into account varying assumptions concerning business conditions, fee levels, buffer margin levels and refunds; and (5) develop an effective mechanism that provides OCC access to replenishment capital in the event of losses that could cause OCC to be non-compliant with the SEC Proposed Rules. Incorporating the results of those efforts, the proposed amendments are intended to allow OCC to implement the Capital Plan and thereby provide OCC with the means to increase its shareholders' equity and, in particular, to obtain timely compliance with Rule 17Ad–22(e)(15)[10] as proposed by the Commission. A more detailed discussion of the manner in which the Capital Plan would allow OCC to comply with Rule 17Ad–22(e)(15) appears below.

OCC's Projected Capital Requirement

Using the methods described in detail below, OCC will annually determine a ''Target Capital Requirement'' consisting of (i) a ''Baseline Capital Requirement'' equal to the greatest of (x) six months operating expenses for the following year, (y) the maximum cost of the recovery scenario from OCC's Recovery and Wind-Down Plan, and (z) the cost to OCC of winding down operations as set forth in the Recovery and Wind-Down Plan, plus (ii) a ''Target Capital Buffer'' linked to plausible loss scenarios from operational risk, business risk and pension risk. OCC has determined that its currently appropriate ''Target Capital Requirement'' is $247 million, reflecting a Baseline Capital Requirement of $117 million, which is equal to six months of projected operating expenses, plus a Target Capital Buffer of $130 million. This Target Capital Buffer would provide a significant capital cushion to offset potential business losses.

As of December 31, 2013, OCC had total shareholders' equity of approximately $25 million,[11] meaning that OCC proposes to add additional capital of $222 million to meet its 2015 Target Capital Requirement. In addition, OCC would be obligated under paragraph (e)(15)(iii)[12] of proposed Rule 17Ad–22 to maintain ''a viable plan'' for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of the Rule;[13] *i.e.,* the Baseline Capital Requirement. OCC has determined that its viable plan for Replenishment Capital should provide for a ''Replenishment Capital Amount'' which would give OCC access to additional capital as needed up to a maximum of the Baseline Capital Requirement, which is currently $117 million.[14] Therefore, OCC's proposed Capital Plan would provide OCC in 2015 with ready access to approximately $364 million in equity capital as follows:

Baseline Capital Requirement	$117,000,000
Target Capital Buffer	130,000,000
Target Capital Requirement	247,000,000
Replenishment Capital Amount	117,000,000
Total OCC Capital Resources	364,000,000

Procedures Followed in Order to Determine Capital Requirement

Various measures were used in determining the appropriate level of capital necessary to comply with the SEC Proposed Rules. An outside consultant conducted a ''bottom-up'' analysis of OCC's risks and quantified the appropriate amount of capital to be held against each risk. The analysis was

[7] The Stockholder Exchanges are: Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ OMX PHLX LLC; NYSE MKT LLC; and NYSE Arca, Inc.

[8] *SEC Proposed Rules* at 32–33, FR 29507, 29515 (May 22, 2014).

[9] *SEC Proposed Rules* at 417–418, FR 29507, 29616 (May 22, 2014).

[10] *SEC Proposed Rules* at 222–223, FR 29507, 29547–29548 (May 22, 2014).

[11] *See* OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC's Web site, *http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.*

[12] *SEC Proposed Rules* at 418, FR 29507, 29616 (May 22, 2014).

[13] *SEC Proposed Rules* at 417, FR 29507, 29616 (May 22, 2014).

[14] The obligation to provide Replenishment Capital will be capped at $200 million, which OCC projects will sufficiently account for increases in its capital requirements for the foreseeable future.

comprehensive across risk types, including credit, market, pension, operational, and business risk. Based on internal operational risk scenarios and loss modeling at or above the 99% confidence level, OCC's operational risk was quantified at $226 million and pension risk at $21 million, resulting in the total Target Capital Requirement of $247 million. Business risk was addressed by taking into consideration that OCC has the ability to fully offset potential revenue volatility and manage business risk to zero by adjusting the levels at which fees and refunds are set and by adopting a ''Business Risk Buffer'' of 25% when setting fees. Other risks, such as counterparty risk and on-balance sheet credit and market risk, were considered to be immaterial for purposes of requiring additional capital based on means available to OCC to address those risks that did not require use of OCC's capital. As discussed in more detail below in the context of OCC's Fee Policy, the Business Risk Buffer of 25% is achieved by setting OCC's fees at a level intended to achieve target annual revenue that will result in a 25% buffer for the year after paying all operating expenses.

An analysis was also performed to identify OCC's risk in terms of the regulatory requirements set forth in proposed Rule 17Ad-22(e)(15)(ii).[15] This analysis estimated that, currently, OCC's maximum recovery costs would be $100 million and projected wind-down costs would be $73 million. OCC's projected expenses for 2015 are $234 million, so that six months projected expenses are $234 million/2 = $117 million. The greater of recovery or wind-down costs and six months of operating expenses is therefore $117 million, and OCC's Baseline Capital Requirement (minimum regulatory requirement) is therefore $117 million. OCC then computed the appropriate amount of a Target Capital Buffer from operational risk, business risk, and pension risk. This resulted in a determination that the current Target Capital Buffer should be $130 million. Thus, the Target Capital Requirement is $117 million + $130 million = $247 million.

Overview of, and Basis for, OCC's Proposal to Acquire Additional Equity Capital

In order to meet its Target Capital Requirement, and after consideration of available alternatives, OCC's Board approved a proposal from OCC's Stockholder Exchanges under which OCC would meet its Target Capital Requirement of $247 million in early 2015 as follows:

Shareholders' Equity as of 1/1/2014	$25,000,000
Shareholders Equity Accumulated Through Retained Earnings[16]	72,000,000
Additional Contribution from Stockholder Exchanges	150,000,000
Target Capital Requirement	247,000,000
Replenishment Capital Amount	117,000,000
Total OCC Capital Resources	364,000,000

The additional contribution of the Stockholder Exchanges would be made in respect of their Class B Common Stock on a *pro rata* basis. The Stockholder Exchanges will also commit to provide additional equity capital up to the Replenishment Capital Amount, which is currently $117 million, in the event Replenishment Capital is needed. While the Replenishment Capital Amount will increase as the Baseline Capital Requirement increases, it would be capped at a total of $200 million that could be outstanding at any point in time. OCC has estimated that the Baseline Capital Requirement would not exceed this amount before 2022. When the limit is being approached, OCC would revise the Capital Plan as needed to address future needs. In consideration for their capital contributions and replenishment commitments, the Stockholder Exchanges will receive dividends as described in the Dividend Policy discussed below for so long as they remain stockholders and maintain their contributed capital and commitment to replenish capital up to the Replenishment Capital Amount, subject to the $200 million cap.

Fee, Refund, and Dividend Policies

Upon reaching the Target Capital Requirement, the Capital Plan and the proposed Fee Policy require OCC to set its fees at a level that utilizes a Business Risk Buffer of 25%. The purpose of this Business Risk Buffer is to ensure that OCC accumulates sufficient capital to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements. Furthermore, the Capital Plan requires OCC to maintain Fee, Refund, and Dividend Policies, described in more detail below, which are designed to ensure that OCC's shareholders' equity remains well above the Baseline Capital Requirement. The proposed Fee, Refund, and Dividend Policies are attached to this filing as Exhibits 5A, 5B, and 5C respectively. The required Business Risk Buffer of 25% is below OCC's 10-year historical pre-refund average buffer of 31%. The target will remain 25% so long as OCC's shareholders' equity remains above the Target Capital Requirement amount. The reduction in buffer margin from OCC's 10-year average of 31% to 25% reflects OCC's commitment to continue to operate as an industry utility and ensuring that market participants benefit as much as possible from OCC's operational efficiencies in the future. This reduction will permit OCC to charge lower fees to market participants rather than maximizing refunds to clearing members and dividend distributions to Stockholder Exchanges. OCC will review its fee schedule on a quarterly basis to manage revenue as closely to this target as possible.[17] For example, if the Business Risk Buffer is materially above 25% after the first quarter of a particular year, OCC may decrease fees for the remainder of the year, and conversely if the Business Risk Buffer is materially below 25% after the first quarter, OCC may increase fees for the remainder of the year.

[15] *SEC Proposed Rules* at 417, FR 29507, 29616 (May 22, 2014).

[16] *See* Proposed Rule Change by The Options Clearing Corporation to Reflect the Elimination of a Discount to the Clearing Fee Schedule, Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR–OCC–2014–05) (Filing for immediate effectiveness of a proposed rule change with the Commission to reinstate OCC's permanent clearing fee schedule for securities options and securities futures that became effective May 1, 2007 (''Permanent Schedule Reinstatement Filing'')). The $72 million is after giving effect to the approximately $40 million refund referred to below.

[17] If OCC's fee schedule needs to be changed in order to achieve the 25% Business Risk Buffer, OCC would file a proposed rule change seeking approval of the revised fee schedule.

The Capital Plan would allow OCC to refund approximately $40 million from 2014 fees to clearing members in 2015 and to reduce fees in an amount to be determined by the Board, effective in the second quarter 2015. OCC will announce new fee levels early in 2015 and will make them effective following notification to clearing members and any necessary approval by the Commission. OCC will endeavor to provide clearing members with no less than 60-day advance notice of the effectiveness of changes to fee levels, particularly those that result in increases to fee levels. No dividends will be declared until December 2015 and no dividends will be paid until 2016.

Changes to the Fee, Refund, or Dividend Policies will require the affirmative vote of two-thirds of the directors then in office and approval of the holders of all of OCC's outstanding Class B Common Stock. The formulas for determining the amount of refunds and dividends under the Refund and Dividend Policies, respectively, which are described in more detail below, assume that refunds are tax-deductible but that dividends are not. The Refund and Dividend Policies would each provide that in the event that refunds payable under the Refund Policy are not tax deductible, the policies would be amended to restore the relative economic benefits between the recipients of the refunds and the Stockholder Exchanges.

Fee Policy

Under the Fee Policy, in setting fees each year, OCC would calculate an annual revenue target based on a forward twelve months expense forecast divided by the difference between one and the Business Risk Buffer of 25%, *i.e.,* OCC will divide the expense forecast by .75. Establishing a Business Risk Buffer at 25% would allow OCC to manage the risk that fees would generate less revenue than expected due to lower-than-expected trading volume or other factors, or that expenses would be higher than projected. The Fee Policy also will include provisions from existing Article IX, Section 9 of the By-Laws to the effect that the fee schedule may also include additional amounts necessary to (i) maintain such reserves as are deemed reasonably necessary by the Board to provide facilities for the conduct of OCC's business and to conduct development and capital planning activities in connection with OCC's services to the options exchanges, Clearing Members and the general public, and (ii) accumulate such additional surplus as the Board may deem advisable to permit OCC to meet its obligations to Clearing Members and the general public; however, these provisions will be invoked only in extraordinary circumstances and to the extent that the Board has determined that the required amount of such additional reserves or additional surplus will exceed the full amount that is expected to be accumulated through the Business Risk Buffer (prior to payment of refunds or dividends) so OCC's fees will ordinarily be based on its projected operating expenses and the Business Risk Buffer of 25%.

Under the Capital Plan, OCC would calculate its annual revenue target as follows:

Annual Revenue Target = Forward 12 Months Expense Forecast/(1–.25).

Because OCC's clearing fee schedules typically reflect different rates for different categories of transactions, fee projections would include projections as to relative volume in each such category. The clearing fee schedule would therefore be set to achieve a blended or average rate per contract sufficient, when multiplied by total projected contract volume, to achieve the Annual Revenue Target. Under extraordinary circumstances, OCC would then add any amount determined to be necessary for additional reserves or surplus and divide the resulting number by the projected contract volume to determine the applicable average fee per cleared contract needed to achieve the additional amounts required. Consistent with past practice, OCC would notify clearing members of the fees that would be applicable for any particular period by describing the change in an information memorandum distributed to all clearing members. Consistent with past practice, OCC would also notify regulators of the fees that would be applicable for any particular period by filing an amendment to its Schedule of Fees as a proposed rule change for immediate effectiveness under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder.[18]

Refund Policy

Under the Refund Policy, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a refund to Clearing Members in December of each year, beginning in 2015, in an amount equal to 50% of the excess, if any, of (i) pre-tax income for the year in which the refund is declared over (ii) the sum of (x) the amount of pre-tax income after the refund necessary to produce after-tax income for such year sufficient to maintain shareholders' equity at the Target Capital Requirement for the following year plus (y) the amount of pre-tax income after the refund necessary to fund any additional reserves or additional surplus not already included in the Target Capital Requirement. Such refund will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. OCC would not be able to pay a refund on a particular date unless dividends were paid on the same date. If Replenishment Capital has been contributed and remains outstanding, OCC would not pay refunds until such time as the Target Capital Requirement is restored through the accumulation of retained earnings. Refunds in accordance with the Refund Policy would resume once the Target Capital Requirement is restored and all Replenishment Capital is repaid in full, provided that the restoration of the Target Capital Requirement and the repayment of Replenishment Capital occurred within 24 months of the issuance date of the Replenishment Capital. If, within 24 months of the issuance date of any Replenishment Capital, such Replenishment Capital has not been repaid in full or shareholders' equity has not been restored to the Target Capital Requirement, OCC would no longer pay refunds to clearing members, even if the Target Capital Requirement is restored and all Replenishment Capital is repaid at a later date.

Dividend Policy

The Dividend Policy would provide that, except at a time when Replenishment Capital is outstanding as described below, OCC would declare a dividend on its Class B Common Stock in December of each year in an aggregate amount equal to the excess, if any, of (i) after-tax income for the year, after application of the Refund Policy (unless the Refund Policy has been eliminated, in which case the refunds shall be deemed to be $0) over (ii) the sum of (A) the amount required to be retained in order to maintain total shareholders'

[18] *See, e.g.,* the Permanent Schedule Reinstatement Filing, *supra* n. 13; Proposed Rule Change by The Options Clearing Corporation to Reduce the Per Contract Clearing Fee for Routing Trades Executed in Accordance with the Options Order Protection and Locked/Crossed Market Plan to $.01 per Contract, Securities Exchange Act Release No. 68025 (October 12, 2012), 77 FR 63398 (October 16, 2012) (SR–OCC–2012–18).

equity at the Target Capital Requirement for the following year, plus (B) the amount of any additional reserves or additional surplus not already included in the Target Capital Requirement. Such dividend will be paid in the year following the declaration after the issuance of OCC's audited financial statements, provided that (i) the payment does not result in total shareholders' equity falling below the Target Capital Requirement, and (ii) such payment is otherwise permitted by applicable Delaware law and applicable federal laws and regulations. If Replenishment Capital has been contributed and remains outstanding, OCC would not pay dividends until such time as the Target Capital Requirement is restored.

OCC's Status as an Industry Utility

OCC has always been operated on an ''industry utility'' model. The Stockholder Exchanges have heretofore contributed only minimal capital to OCC.[19] OCC's By-Laws currently require that OCC set its clearing fees at a level that is designed to cover operating expenses and to maintain such reserves and accumulate such additional capital as are deemed reasonably necessary for OCC to meet its obligations to its clearing members and the public. Clearing fees that are collected in excess of these amounts are refunded annually on a *pro rata* basis to the clearing members who paid them. Under this model, OCC has never paid dividends to the Stockholder Exchanges. However, OCC has paid significant refunds to clearing members each year. OCC is aware that a portion—possibly a significant portion—of those refunds are not passed through by the clearing members to their end user customers. Accordingly, by adopting an approach that includes paying dividends to the Stockholder Exchanges that have invested a significant amount of additional capital ($150 million) but that also reduces the historical pre-refund average buffer of 31% by adopting a Business Risk Buffer of 25%, OCC believes that the proposed approach maintains, and perhaps better aligns with, an industry utility model.

Given the very large increase in capital that OCC has determined to be appropriate in order to assure compliance with regulatory requirements and meet the increased responsibilities imposed upon it as a systemically important financial market utility, OCC has determined that the best alternative available to it is to obtain a substantial further capital contribution from the Stockholder Exchanges. This cannot be accomplished without modification of the past practice of not providing dividends to stockholders. Accordingly, it is necessary for OCC to establish the new Fee Policy, Refund Policy, and Dividend Policy. Because of the Business Risk Buffer being set at 25%, the combination of the Fee, Refund, and Dividend Policies will effectively cap the dividends to be paid to the Stockholder Exchanges at a level that the Board (with the advice of outside financial experts) has determined results in a reasonable rate of return on contributed capital, particularly in comparison to the implied cost of capital to the clearing members and their customers of instead pursuing an approach which required the accumulation of retained earnings through higher fees and no refunds for several years. OCC will continue to refund a significant percentage of excess clearing fees to clearing members, thereby benefiting both clearing members and, to the extent that refunds are passed through by the clearing members to their end user customers, their customers. The Capital Plan therefore effectively preserves OCC's industry utility model of providing its services in an efficient manner, but enhances the benefits to the end user customers by charging lower initial fees as a result of the decrease in the buffer margin from OCC's 10-year average of 31% to 25%.

Clearing members and customers will benefit from the proposed Capital Plan because it will allow OCC to continue to provide clearing services at low cost. As noted, OCC expects that this capital infusion from stockholders will enable OCC to provide a significant refund of 2014 fees. OCC further expects that its current clearing fees will be reduced significantly based on the Business Risk Buffer of 25% beginning in 2015 with refunds restored, and that these lower fees will continue for the foreseeable future.

Stockholder Exchanges will benefit from the dividend return they receive and, perhaps more importantly, they will be assured that OCC will be in a position to provide clearing services for their markets on an on-going basis within the same basic structure that has served these markets well since their inception and without the need to radically change the structure to address potential demands of outside equity investors. Non-Stockholder Exchanges will also benefit by continuing to receive OCC's clearing services for their products on the same basis as they presently do.[20]

OCC also believes that the Capital Plan will better align the interests of Stockholder Exchanges and clearing members with respect to expenses, since changes to the level of operating expenses directly affect the Target Capital Requirement. In sum, OCC believes that the present proposal represents a fair and reasonable balancing of the interests of the Stockholder Exchanges, the other exchanges for which OCC provides clearing services, clearing members, customers, and the general public while providing an immediate infusion of capital and a structure within which OCC can meet its obligations to the public as a systemically important financial market utility, as well as the requirements under the SEC Proposed Rules.

Replenishment Capital Plan

OCC proposes to put in place a Replenishment Capital Plan whereby OCC's Stockholder Exchanges are obligated to provide on a *pro rata* basis a committed amount of Replenishment Capital should OCC's total shareholders' equity fall below the hard trigger (as defined below). The aggregate committed amount for all five Stockholder Exchanges in the form of Replenishment Capital that could be accessed at any time would be capped at the excess of (i) the lesser of (A) the Baseline Capital Requirement, which is currently $117 million, at the time of the relevant funding or (B) $200 million, over (ii) amounts of outstanding Replenishment Capital (''Cap''). The $200 million figure in the Cap formula takes into account projected growth in the Baseline Capital Requirement for the foreseeable future. The commitment to provide Replenishment Capital would not be limited by time, but only by the Cap. Replenishment Capital could be called in whole or in part after the occurrence of a ''hard trigger'' event described below, subject to the Cap. If the Baseline Capital Requirement approaches or exceeds $200 million, the Board can consider, as part of its annual review of the Replenishment Capital Plan that is required by the SEC Proposed Rules, alternative arrangements to obtain replenishment capital in excess of the $200 million

[19] OCC's common stock and paid in capital total $2,659,999. See OCC 2013 Annual Report, Financial Statements, Statements of Financial Condition, available on OCC's Web site, *http://optionsclearing.com/components/docs/about/annual-reports/occ_2013_annual_report.pdf.*

[20] Non-Stockholder Exchanges contribute capital by purchasing a promissory note in the principal amount of $1,000,000. *See* Section 2 of Article VIIB of OCC's By-Laws. The required capital contribution of Non-Stockholder exchanges will not change under the Capital Plan.

committed under the Replenishment Capital Plan. In addition, the Refund Policy and the Dividend Policy will provide that, in the absence of obtaining any such alternative arrangements, the amount of the difference will be subtracted from amounts that would otherwise be available for the payment of refunds and dividends.

Replenishment Capital contributed to OCC under the Replenishment Capital Plan would take the form of a new class of common stock (''Class C Common Stock'') of OCC to be issued to the Stockholder Exchanges solely in exchange for Replenishment Capital contributions.

The Replenishment Capital Plan would be part of OCC's overall Capital Plan. In implementing the Replenishment Capital Plan, OCC's management would monitor OCC's levels of shareholders' equity to identify certain triggers, or reduced capital levels, that might require action. OCC has identified two key triggers—a soft trigger and a hard trigger—and proposes that OCC take certain steps upon the occurrence of either as described in more detail below.

The ''soft trigger'' for re-evaluating OCC's capital would occur if OCC's shareholders' equity falls below the sum of (i) the Baseline Capital Requirement and (ii) 75% of the Target Capital Buffer. The soft trigger would be a warning sign that OCC's capital had fallen to a level that required attention and responsive action to prevent it from falling to unacceptable levels. Upon a breach of the soft trigger, OCC's senior management and the Board would review alternatives to increasing capital, and take appropriate action as necessary, including increasing fees or decreasing expenses, to restore shareholders' equity to the Target Capital Requirement.

The ''hard trigger'' for making a mandatory Replenishment Capital call would occur if shareholders' equity falls below 125% of the Baseline Capital Requirement (''Hard Trigger Threshold''). The hard trigger would be a sign that corrective action more significant and with a more immediate impact than increasing fees or decreasing expenses should be taken to increase OCC's capital, either as part of a recovery plan or a wind down plan for OCC's business. OCC's shareholders' equity would have to fall more than $100 million below the fully funded capital amount described above in order for the Hard Trigger Threshold to be breached. As a result, OCC views the breach of the Hard Trigger Threshold as unlikely and occurring only as a result of a significant, unexpected event. Upon a breach of the Hard Trigger Threshold, the Board would have to determine whether to attempt a recovery, a wind-down of OCC's operations or a sale or similar transaction, subject in each case to any necessary stockholder consent. If the Board decides to wind-down OCC's operations, OCC would access the Replenishment Capital in an amount sufficient to fund the wind-down, as such amount would be determined by the Board, and subject to the Cap described above. If the Board decides to attempt a recovery of OCC's capital and business, OCC would access the Replenishment Capital in an amount sufficient to return shareholders' equity to an amount equal to $20 million above the Hard Trigger Threshold, subject to the Cap described above.

While Replenishment Capital is outstanding, no refunds or dividends would be paid and, if any Replenishment Capital remains outstanding for more than 24 months or the Target Capital Requirement is not restored during that period, changes would be made to how OCC calculates refunds and dividends, as described in more detail above under Refund Policy and Dividend Policy. In addition, while Replenishment Capital is outstanding, OCC would first utilize the entire amount of Available Funds to repurchase, on a *pro rata* basis from each Stockholder, to the extent permitted by applicable Delaware and federal law and regulations, outstanding shares of Class C Common Stock as soon as practicable after completion of the financial statements following the end of each calendar quarter at a price equal to the original amount paid for such shares, plus an additional ''gross up'' amount to compensate the holders of the Class C Common Stock for taxes on dividend income (if any) that they may have to recognize as a result of such repurchase.[21] For this purpose, ''Available Funds'' would equal, as of the end of any calendar quarter, the excess, if any, of (x) shareholders' equity over (y) the Minimum Replenishment Level. The ''Minimum Replenishment Level'' would mean $20 million above the Hard Trigger Threshold, so that OCC's shareholders' equity would remain at or above the Minimum Replenishment Level after giving effect to the repurchase. Furthermore, under the Dividend and Refund Policies, refunds and dividends would be suspended until such time as the Target Capital Requirement is restored.

[21] Based on current federal rates, if the full amount of the payment is classified as a dividend and the recipient is entitled to a dividends received deduction, this gross up is estimated to be approximately 12% of the payment.

Amendments to Governing Documents

In order to implement the Capital Plan, OCC proposes to make amendments to its By-Laws and Restated Certificate of Incorporation and amend and restate its Stockholders Agreement.

Amendments to By-Laws

OCC is proposing various amendments to the By-Laws in order to implement the Capital Plan. Specifically, OCC proposes to amend the definition of Equity Exchange in Article I, Section 1 to take into account the potential ownership of Class C Common Stock by the Stockholder Exchanges.

Article II, Section 3 would be amended to change the definition of quorum such that a majority of outstanding common stock entitled to vote at a meeting of Stockholders either in person or by proxy would constitute a quorum for any such meeting of the Stockholders. In addition, OCC proposes to amend Article II, Section 5 to allow for the potential issuance of Class C Common Stock, which will not have voting rights except as required by applicable law.

Article VIIA, Section 2, would be amended to (i) provide for the potential issuance of Class C Common Stock in consideration for Replenishment Capital provided by Stockholder Exchanges, (ii) permit, consistent with the proposed amendments to the Stockholders Agreement, the transfer of shares of common stock to another Stockholder, and (iii) reflect the right of other Stockholders, consistent with the proposed amendments to the Stockholders Agreement, to purchase the shares of common stock of another Stockholder. Article VIIA, Section 3, would be amended to conform to the changes to Article VIIA, Section 2.

OCC proposes amendments to Article VIII, Section 5(d), to require that a Board decision to utilize OCC's retained earnings to compensate for a loss or deficiency to the Clearing Fund would require unanimous consent from the holders of Class A Common Stock and Class B Common Stock. This proposed amendment is intended to protect Stockholders from an action taken without their consent that could increase their likelihood of being required to provide Replenishment Capital. Similarly, Article XI, Section 1 would also be amended to account for the possible issuance of the non-voting Class C Common Stock consistent with the Restated Certificate of Incorporation

as discussed below, and to require unanimous Stockholder approval for any future amendments to the new provision of Article VIII, Section 5(d) described above.

Article IX, Section 9, would be amended in three ways. First, the concept of the Business Risk Buffer would be incorporated into Article IX, Section 9(a). Second, Article IX, Section 9, would be amended to provide that OCC would only add amounts for reserves and surpluses in addition to the Business Risk Buffer in extraordinary circumstances and only to the extent that the Board has determined that the required amount of additional reserves and surplus is expected to exceed the full amount that is anticipated to be accumulated through the Business Risk Buffer prior to payment of refunds and dividends. Third, Article IX, Section 9, would be amended to expressly reference the potential payment of dividends in accordance with the Dividend Policy.

Amendments to Restated Certificate of Incorporation

OCC is proposing to amend its Restated Certificate of Incorporation in order to implement the Capital Plan. The proposed amendment to the restated Certificate of Incorporation is attached to this filing as Exhibit 5D. Article IV would be amended in multiple locations to (i) reduce the number of authorized shares of Class A Common Stock and Class B Common Stock to the number of shares currently outstanding, and the number of series of Class B Common Stock, to reflect the fact that there are only five Stockholder Exchanges, (ii) to eliminate a provision under which additional shares of Class A Common Stock and Class B Common Stock could be authorized in certain circumstances without a separate vote of each series of Class B Common Stock, (iii) create Class C Common Stock as non-voting stock, (iv) set a par value for Class C Common Stock of $1,000 per share, (v) provide for distribution upon a liquidation or dissolution of OCC to holders of Class A, Class B, and Class C Common Stock, *pro rata* on a pari passu basis, the amount of the par value of their shares, and (vi) remove restrictions on the transfer of shares of Class B Common Stock to more than one entity in order to address the possible exercise by another Stockholder of its right of first refusal under the Amended and Restated Stockholders Agreement. Additionally, Article IV would be amended to make clear that the prohibition on OCC's creating or issuing rights or options to purchase OCC stock set forth in Article IV would not restrict the ability of OCC to enter into the Replenishment Capital Plan. Finally, technical changes would be made to Article VI in connection with the creation of Class C Common Stock as non-voting stock.

Amendments to Stockholders Agreement

OCC is proposing various amendments to the Stockholders Agreement to make technical changes relating to the additional contributions of capital to be made by the Stockholder Exchanges under the Capital Plan and the potential issuance of Class C Common Shares. The proposed Amended and Restated Stockholders Agreement is attached to this filing as Exhibit 5E. In part, the amendments to the Stockholders Agreement would provide Stockholders with a secondary right of refusal to be exercised if a Stockholder wished to sell its shares and OCC chose not to exercise its existing right of first refusal to purchase those shares. This change was considered necessary because after the additional contributions of capital by the Stockholder Exchanges under the Capital Plan, shares of Class B Common Stock will be significantly more valuable, making it less likely that OCC would be able to exercise its right of first refusal. Providing the non-selling Stockholder Exchanges with a secondary right of first refusal would increase the chances that a selling Stockholder Exchange would find a purchaser for its shares from among OCC's existing owners. Because OCC's Stockholders Agreement has already been amended several other times, for convenience OCC is also proposing to amend and restate the Stockholders Agreement to incorporate all previous amendments and the new amendments into a single comprehensive agreement.

Each of the proposed new amendments to the Stockholders Agreement is described below, in the order they appear in the agreement. OCC proposes a technical amendment to Section 1 of the Stockholders Agreement to refer to the definitions of Class A Common Stock, Class B Common Stock, and Class C Common Stock in the Restated Certificate of Incorporation and By-Laws. OCC proposes an amendment to Section 3 which would delete an obsolete reference to a plan relating to OCC's original reorganization into a common clearing facility for all options exchanges. OCC proposes a technical amendment to Section 5(a) to add a reference to the procedures for Stockholder Exchanges to acquire shares pursuant to their secondary rights of first refusal in certain situations that will be set out in amended Section 10(e). OCC is proposing an amendment to Section 5(b) providing that the Stockholder Exchanges may not sell or transfer less than all of their shares without the consent of OCC. OCC seeks to prevent a partial sale by a Stockholder Exchange of a portion of its shares of Class A Common Stock, Class B Common Stock, or Class C Common Stock to avoid difficulties that could arise for OCC if, as a result of a partial sale, voting rights, dividend rights, and replenishment capital were spread across Stockholder Exchanges on a non *pro rata* basis. Section 5(b) would further clarify that if OCC consented to a partial sale the Stockholder Exchanges' right of first refusal would still apply, and that a Stockholder Exchange could sell shares of Class C Common Stock to OCC without selling its shares of Class A Common Stock and Class B Common Stock. OCC proposes to amend Section 6(a) to provide Stockholders, upon the non-exercise of OCC's right of first refusal, a secondary right of first refusal to purchase shares of other Stockholders in certain circumstances discussed above, and to establish procedures governing the exercise of this right. Section 6(b) would be amended to explicitly state that OCC can assign its rights under the Stockholders Agreement to purchase shares of a Stockholder Exchange in the event of such Stockholder Exchange's bankruptcy or insolvency, and to create an exception from the right of first refusal for transfers to certain affiliates of a Stockholder that meet the exchange eligibility requirements set forth in the By-Laws. Section 6(c) would be amended to make any transfer or encumbrance of shares in violation of the Stockholders Agreement, either voluntarily or by operation of law, void. Section 6(d) would be amended to explicitly state that OCC can assign its rights under the Stockholders Agreement to repurchase shares of any Stockholder that ceases to be qualified to participate in OCC pursuant to the By-Laws. The revised Section 6(c) would take the place of current Section 6(e), which would be deleted. Section 6(e) currently provides that such a pledge or transfer would automatically be deemed to create a transfer of the shares to OCC. OCC proposes conforming amendments to Section 6(f), Section 6(g), Section 7, and Section 8 to provide for the new Stockholder Exchange right of first refusal. OCC proposes deleting Section 9 to remove the right of Stockholders to require OCC to purchase their shares of stock.

OCC proposes to amend Section 10(a) of the Stockholders Agreement to provide that the purchase price paid upon exercise of purchase rights by OCC or the Stockholder Exchanges would be equal to the lowest of (i) the book value of the shares to be purchased, (ii) the total capital contribution of the selling Stockholder and (iii) in the case of exercise of a right of first refusal, the price originally offered for such shares. OCC proposes other technical amendments to Sections 10(a), 10(b) and 10)(c) of the Stockholders Agreement concerning the purchase price formula, procedures, and timing for OCC's repurchase rights of shares (or, if applicable, the purchase of a Stockholder's shares by another Stockholder) pursuant to the terms of the Stockholders Agreement. Section 10(d) would be amended such that any consideration to be paid by OCC upon the exercise of a right of first refusal would be subordinated to all other claims of all other creditors of OCC, and to prohibit OCC from declaring or paying any dividends, acquiring for value any shares of stock or distributing assets to any Stockholder Exchange, except with regard to required purchases or redemptions of shares of Class C Common Stock or payments of dividends in accordance with the Dividend Policy. OCC proposes to amend current Section 10(e) by moving its provisions addressing the subordination of payments by OCC and non-payment of dividends under certain circumstances into the proposed Section 10(d) as discussed above. OCC proposes technical amendments to current Section 10(g), proposed Section 10(e) concerning the process under which OCC would acquire shares upon exercise of its right of first refusal. OCC also proposes to move technical provisions of the current Section 10(f) concerning the payment of such shares into Section 10(e). Section 10(f) would then be amended to address procedures for Stockholders that exercise their right of first refusal.

Section 11 of the Stockholders Agreement would be amended in order to make a Stockholder's right to transfer shares dependent upon the non-exercise of OCC's and other Stockholders' right of first refusal to the purchase of such Stockholder's shares. Additionally, Section 11 would be amended to provide that the transfer of a Stockholder's shares under that section would not be effective without the transferee's assuming the rights and obligations under the Stockholders Agreement, certain joinders to the Stockholders Agreement and other agreements between OCC and Stockholders. Section 14(a) would be amended to make reference to the Stockholders Agreement. Section 14(b) would be amended to make a technical change relating to the legend on OCC's stock certificates. Section 15 would be amended to update the mailing addresses of the Stockholder Exchanges for written notices and formal communications. Section 16(c) would be amended to clarify that a Stockholder Exchange would be able to assign its rights under the Stockholders Agreement only to a party to whom it would be permitted to transfer its shares. In addition, Section 16(c) would be amended to provide that OCC may only assign its repurchase rights under Section 6(b) or Section 6(d) of the Stockholders Agreement. OCC would be able to assign such rights with respect to all or a portion of the shares of stock owned by a Stockholder Exchange, and would be required to provide the non-selling Stockholder Exchanges with a right of first refusal in connection with any such contemplated assignment comparable to the secondary right of first refusal applicable with respect to a voluntary sale by a Stockholder Exchange and described above. Sections 16(f) and 16(g) would be amended to effectuate the amendment and restatement of the existing Stockholders Agreement.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (''Act''),[22] and the rules and regulations thereunder, because by implementing the Capital Plan, OCC would ensure that it could continue to promptly and accurately clear and settle securities transactions even if it suffered significant operational losses. By ensuring that it maintains sufficient capital and that it can replenish the capital in the event it falls below desirable levels, the Capital Plan would also enable OCC to maintain safe and secure obligations, in compliance with Rule 17Ad–22(d)(6).[23] The proposed Capital Plan would also, as discussed in more detail above, ensure OCC's compliance with new regulatory requirements proposed by the Commission seeking to promote the safe and reliable operation of registered clearing agencies, and in particular proposed subsection (e)(15) of Rule 17Ad–22.[24] The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.[25] OCC believes that the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because the proposed changes relate to OCC's plan for raising and maintaining adequate capital from its owner exchanges, and therefore do not affect clearing members' or others' access to OCC's services or the nature of these services.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would not impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[26]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(d)(6).

[24] *SEC Proposed Rules* at 156, FR 29507, 29616 (May 22, 2014).

[25] 15 U.S.C. 78q–1(b)(3)(I).

[26] OCC also filed proposals in this proposed rule change as an advance notice under Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010. 12 U.S.C. 5465(e)(1). *See supra* note 3.

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–OCC–2015–02 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–OCC–2015–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_15_02.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2015–02 and should be submitted on or before February 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–01755 Filed 1–29–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74132; File No. SR–FICC–2014–11]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Amend the Government Securities Division Rulebook and the Mortgage Backed Securities Clearing Rules In Order To Move the Time of Novation With Respect to Certain Trades, Include Rules To Reflect Existing Processes, and Clarify Certain Rules To Reflect Current Practices

January 26, 2015.

I. Introduction

On December 2, 2014, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2014–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed change was published for comment in the **Federal Register** on December 16, 2014.[3] The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The rule change, as proposed, moves the time of novation applicable to certain transactions submitted to FICC's Government Securities Division (''GSD'') and FICC's Mortgage Backed Securities Division (''MBSD'') to earlier in the clearing process in order to provide members with additional legal certainty, for purposes of members' regulatory capital requirements, that FICC will be the legal counterparty with respect to their guaranteed trades.

Currently, FICC guarantees the settlement of a trade upon comparison, which generally occurs when FICC issues initial ''output'' to GSD netting members or MBSD clearing members, as applicable, indicating that their trades have compared,[4] provided that the trade meets the requirements of the GSD Rulebook (''GSD Rules'') or the MBSD Rulebook (''MBSD Rules''), as applicable.[5]

Novation, which refers to the termination of delivery, receive and related payment obligations between the original parties to the contract and the replacement of such obligations with identical obligations between each party and FICC, currently does not occur until later in the clearing and settlement process than comparison. Under the GSD Rules, novation currently occurs when subsequent ''netting output'' is issued to netting members (usually the day before settlement). Under the MBSD Rules, novation currently occurs when subsequent ''pool netting output'' is issued to clearing members (usually the day before settlement).

FICC stated in its proposed rule change that it was proposing the rule change because it understood that, as its members (or their advisors) analyze their netting rights with respect to transactions cleared through FICC for purposes of regulatory capital requirements, it is beneficial for members that FICC become the legal counterparty at the point its guarantee attaches.

Time of Novation—Rule Changes

Under the revised GSD Rules and MBSD Rules, as approved, novation will occur at comparison for netting eligible transactions (for GSD) and SBO-Destined Trades[6] (for MBSD). This means that, at the point of trade comparison, FICC will both guarantee the settlement of the transactions (as it does today) and novate such transactions, becoming the legal counterparty to each submitting member with respect to such transactions.

Under the revised GSD Rules, as approved pursuant to this rule change, all netting eligible transactions that compare in accordance with the GSD Rules will novate at the point of comparison.

As amended by this proposal, pursuant to the MBSD Rules, only SBO-Destined Trades, all of which are

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–73805 (December 10, 2014), 79 FR 74790 (December 16, 2014) (SR–FICC–2014–11).

[4] In the case of GSD locked-in trades, comparison occurs upon receipt of the trade data submitted to FICC from the locked-in trade source. GSD Rule 6C.

[5] *See* GSD Rule 11B and MBSD Rule 5.

[6] The MBSD Rules define a ''SBO-Destined Trade'' as a to-be-announced (''TBA'') transaction in the clearing system intended for TBA Netting in accordance with the provisions of the Rules. MBSD Rule 1. In a TBA transaction, members agree on a sale price, quantity, and the characteristics of the securities being sold, but they do not specify which particular securities will be delivered on the settlement date.

included in the TBA Netting process and must be submitted to the Pool Netting process,[7] will novate at the point of comparison. Other types of transactions, including Trade-for-Trade Transactions[8] and Specified Pool Trades,[9] will continue to be guaranteed at comparison, as they are today, but FICC will not novate such transactions at comparison. Instead, such transactions will be treated as they are today: (1) To the extent Trade-for-Trade Transactions are included in the Pool Netting process,[10] FICC will novate such Transactions once the Pool Netting[11] process is completed and (2) Specified Pool Trades, which are not included in the TBA Netting process nor the Pool Netting process, are not novated today (they settle outside of FICC between the submitting counterparties) and will continue to not be novated under the proposal.[12]

[7] MBSD conducts two separate netting processes to consolidate settlement obligations and reduce the number of securities and the amount of cash that must be exchanged to settle transactions. TBA Netting is the process used to net SBO-Destined Trades that have compared in accordance with the MBSD Rules. TBA Netting is conducted before particular securities (''pools'') are identified to the SBO-Destined Trades. Pool Netting, which occurs after MBSD clearing members allocate pools to transactions, is the process used to aggregate and match offsetting pool delivery obligations submitted by MBSD clearing members to satisfy their settlement obligations. MBSD Rules 6 and 7. An MBSD clearing member may submit a transaction to Pool Netting even if such transaction was not submitted for TBA Netting. The rule change includes the addition of a new Section 7 to MBSD Rule 8 stating that each clearing member must submit to FICC for inclusion in Pool Netting each SBOO and SBON Trade to which such clearing member is a party. The terms ''SBOO Trade'' and ''SBON Trade'' are defined in MBSD Rule 1, as amended by this rule change. Section 7 of MBSD Rule 8 has been added to reflect MBSD's existing requirements and practices.

[8] The MBSD Rules define ''Trade-for-Trade Transaction'' as a TBA transaction submitted to FICC not intended for TBA Netting in accordance with the provisions of the Rules. MBSD Rule 1.

[9] The MBSD Rules define ''Specified Pool Trades'' as a trade in which all required pool data, including the pool number to be delivered on the contractual settlement date, are agreed upon by the clearing member at the time of execution. MBSD Rule 1.

[10] Trade-for-Trade Transactions that are not submitted to the Pool Netting process must be settled outside of FICC between the submitting counterparties.

[11] As noted in SR–FICC–2008–01, a clearing member that has a trade that was matched with a stipulation (''Stip Trade'') would not submit such trade for Pool Netting. Pool Netting creates delivery obligations based off the net position of clearing members without regard to the original counterparty relationship. With a Stip Trade, the buyer and seller will want to ensure the receipt or delivery, as applicable, is maintained between themselves to ensure that the other party adheres to the stipulated terms. Securities Exchange Act Release No. 34–66550 (March 9, 2012), 77 FR 15155 (March 14, 2014) (SR–FICC–2008–01). Therefore, as with the current process, FICC does not expect to novate Stip Trades.

[12] MBSD Rule 10.

In order to effectuate this change in the time of novation as described above, the rule change adds language to the GSD Rules (new Section 8 of Rule 5) and the MBSD Rules (new Section 13 of Rule 5) that states that FICC will guarantee and novate applicable transactions upon comparison, subject to the parameters set forth in the rule change, as proposed. Conforming changes also will be made to GSD Rule 3A, GSD Rule 6B, GSD Rule 6C, GSD Rule 11, GSD Rule 14, GSD Rule 20, GSD Rule 21A, Rule 22B, MBSD Rule 6, MBSD Rule 8, MBSD Rule 10, MBSD Rule 11 and MBSD Rule 17A. In addition, the definition of ''novation'' in both GSD Rule 1 and MBSD Rule 1 is clarified to reflect that delivery, receive and related payment obligations between members will be terminated and replaced with identical obligations to and from FICC at the point in time that the trade is compared in accordance with the applicable Rules.

The rule change, as approved, makes clear that under the MBSD Rules certain settlement obligations continue to be settled between the settlement counterparties and not vis-à-vis FICC; these are the obligations that are not included in the Pool Netting process pursuant to MBSD Rule 8 (Pool Netting). The rule change does not change this existing process. However, because the rule change moves the time of novation up to the time of comparison for certain MBSD transactions, the rule change (in MBSD Rule 5, Section 2) makes clear that the settlement counterparties continue to settle with each other but do so on behalf of FICC for those transactions that are novated to FICC.

According to FICC, the proposal to move the time of novation as noted above does not change FICC's risk exposures. Because FICC currently guarantees eligible trades upon comparison, FICC already assumes responsibility for settling such trades at the point of comparison. According to FICC, adding legal novation at the point of comparison does not increase FICC's obligations and therefore, does not require any changes to FICC's risk management processes. In addition, FICC notes that the rule change does not change FICC's operational processes.

Formalization of Existing Processes

In addition, the rule changes formalize the following existing processes:

- Section 7 of MBSD Rule 8 is added to state that all SBOO Trades and SBON Trades[13] must be submitted to Pool Netting.
- MBSD Rules 15 and 16 are revised to clarify that, upon the insolvency of a member's original counterparty to a compared trade, such member cannot unilaterally modify its obligations with respect to transactions originally entered with such counterparty. In the MBSD Rules, because certain trades are not novated and will continue to not be novated under this proposal, the rule change makes clear that upon a cease to act with respect to a member by FICC, the solvent member to a compared trade with the defaulting member may not unilaterally act with respect to such trade.

These changes are not intended to change FICC's current operations or processes.

Clarification To Reflect Current Processes

In addition, the rule change clarifies certain GSD and MBSD Rules to reflect actual practices and requirements as follows:

- MBSD Rule 17 is revised to clarify that when FICC ceases to act for a member, FICC may dispose of such member's Trade-for-Trade Transactions based upon their generic terms. These changes are not intended to change FICC's current operations or processes.

Specific Changes

With respect to the GSD Rules, the proposed changes are as follows:

- The term ''Interactive Submission Method'' is revised to correct a typographical error.
- For clean-up and clarification purposes, the term ''Novation'' is revised to reflect that delivery, receive and related payment obligations between GSD netting members will be terminated and replaced with identical obligations to and from FICC at the point in time that the trade is compared in accordance to the GSD Rules.
- Rule 3A, Sections 2(i), 7(a), 7(d), 14(c), and 16(a) are revised to reflect that trades submitted by Sponsored Members[14] will novate to FICC at the time that such trades receive FICC's guaranty of settlement.
- Rule 5 is revised to include a new Section 8 entitled ''Novation and Guaranty of Compared Trades,'' which provides for the following: (1) Compared trades that meet the

[13] The terms ''SBOO Trade'' and ''SBON Trade'' are defined in MBSD Rule 1, as amended by this proposal.

[14] The term ''Sponsored Member'' means any Person that has been approved by FICC to be sponsored into membership by a Sponsoring Member pursuant to Rule 3A. GSD Rule 1.

requirements of the GSD Rules and were entered into in good faith will novate to FICC and FICC will guarantee the settlement for each such compared trade; (2) if a compared trade becomes uncompared or cancelled, FICC's guaranty and novation of such trade will be reversed and cancelled; (3) if a compared trade is modified after novation and such modification does not cause the trade to become uncompared, then the modification will cause a corresponding modification to the deliver, receive and related payment obligations between the GSD netting members and FICC; (4) at the time that a compared trade becomes novated, such trade ceases to be bound by any bilateral agreement between the parties with respect to the deliver, receive and related payment obligations, however, if the trade becomes uncompared or is cancelled, such trade shall be governed by the bilateral agreement that governed the trade prior to the novation; and (5) if a right of substitution was established by the parties to a repurchase transaction, such right will continue and be recognized by FICC after novation.

- Rule 6B, Section 4 deletes the provision which states that an uncompared trade will cease to be guaranteed by FICC because this concept is now covered in Rule 5, Section 8.
- Rule 6C, Section 10 deletes the provision which states that a locked-in trade that becomes uncompared will cease to be guaranteed by FICC because this concept is now covered in Rule 5, Section 8.
- Rule 6C, Section 11 deletes the provision which states that a netting eligible auction purchase that becomes uncompared will cease to be guaranteed by FICC because this concept is now covered in Rule 5, Section 8.
- Rule 6C, Section 12 deletes the provision which states that a GCF Repo Transaction [15] that becomes uncompared will cease to be guaranteed by FICC because this concept is now covered in Rule 5, Section 8.
- Rule 11, Section 6 is revised to reflect that (1) novation occurs at comparison; and (2) at netting, the previously novated deliver, receive and related payment obligations between the netting members and FICC will be terminated and replaced by net deliver, receive and related payment obligations as listed in the report made available by FICC to the netting members.
- Rule 11B is revised to correct typographical errors.
- Rule 14, Section 3 is revised to reflect that (1) novation occurs at comparison; and (2) at netting, the previously novated deliver, receive and related payment obligations between the netting members and FICC created by Forward Trades will be terminated and replaced by net deliver, receive and related payment obligations as listed in the report made available by FICC to the netting members.
- Rule 20, Section 5 is revised to reflect that with respect to GCF Repo Transactions, novation will occur at comparison in accordance with Rule 5, Section 8.
- Rule 21A is revised to incorporate the concept of novation.
- Rule 22B included a sentence providing that upon FICC's default, trades that had compared would be deemed novated. Because the GSD Rules are being revised to reflect that novation occurs at comparison, this sentence is no longer necessary. As a result, it is being deleted in connection with this rule change.

With respect to the MBSD Rules, the changes are as follows:

- For clean-up and clarification purposes, the term ''Novation'' is revised to reflect that delivery, receive and related payment obligations between MBSD clearing members will be terminated and replaced with identical obligations to and from FICC in accordance with the MBSD Rules.
- The term ''SBO Contra-Side Member'' is revised to correct a typographical error.
- The term ''SBO Net-Out Position'' is revised to clarify that the term is used in connection with offsetting purchase and sale SBO-Destined Trades that were originally between different clearing members (but, once novated at comparison, are between such members and FICC).
- The term ''SBO Net-Out Unit'' is being deleted because this term is not used in the MBSD Rules.
- The term ''SBO Netted Position'' is revised to clarify that the term is used in connection with offsetting purchase and sale SBO-Destined Trades that were originally between the same clearing members (but, once novated at comparison, are between such members and FICC).
- The term ''SBON Trade'' is revised to correct a typographical error.
- The term ''SBOO Trade'' is revised to correct a typographical error.
- Rule 5, Section 1 is revised to correct a typographical error.
- Rule 5, Section 2 is revised to reflect that (1) transactions that are not novated pursuant to this proposal (pursuant to new Section 13 of Rule 5 discussed below) and not netted and novated through the Pool Netting system will be settled directly between the members; and (2) transactions novated pursuant to new Section 13 of Rule 5 and not thereafter netted through the Pool Netting system pursuant to Rule 8 will settle between members on behalf of FICC.
- Rule 5, Section 12 is revised to correct a typographical error.
- Rule 5 includes a new Section 13 entitled ''Novation'' which states the following: (1) FICC will guarantee and novate SBO-Destined Trades that meet the requirement of the MBSD Rules and have been entered into in good faith; (2) FICC will not novate SBO-Destined Trades that are partially compared; (3) to the extent a partially compared SBO-Destined Trade becomes fully compared, FICC will novate such trade; (4) if a trade becomes uncompared or cancelled, the guaranty and novation of such transaction shall be reversed; (5) at the time that an SBO-Destined Trade is novated to FICC, such trade shall cease to be bound by any bilateral agreement between the parties to the trade with respect to the deliver, receive and related payment obligations, however, if the trade becomes uncompared or is cancelled, such trade shall be governed by the bilateral agreement that governs such trade prior to the novation.
- Rule 6, Sections 1(a), (b) and (c) are revised to take into account the fact that SBO-Destined Trades are novated upon comparison and are, therefore, legally between MBSD clearing members and FICC after comparison.
- Rule 8, Section 6 is revised to take into account the fact that SBO-Destined Trades are novated upon comparison and are, therefore, legally between MBSD clearing members and FICC after comparison.
- Rule 8 includes a new Section 7 which is entitled ''Obligation to Submit SBOO and SBON Trades to Pool Netting.'' This Section reflects MBSD's current requirement and current practice that clearing members are required to submit all SBOO Trades and SBON Trades for inclusion in the Pool Netting system.
- Rule 10, Section 2 is revised to clarify that clearing members are required to submit a notification of settlement for SBO Trades that are novated at comparison and processed through the TBA Netting system but that are not thereafter submitted to the Pool Netting system.

[15] Pursuant to the GSD Rules, the term ''GCF Repo Transaction'' means a Repo Transaction involving generic CUSIP numbers the data on which are submitted to FICC on a locked-in-trade basis pursuant to the provisions of Rule 6C, for netting and settlement by FICC pursuant to the provisions of Rule 20. GSD Rule 1.

• Rule 11, Section 1 is revised to take into account the fact that SBO Trades are novated upon comparison and are, therefore, legally between MBSD clearing members and FICC after comparison.

• Rule 15 is revised to clarify the current process with respect to transactions submitted to and compared by FICC, whereby in the event a member's original counterparty becomes insolvent, such member cannot unilaterally modify its obligations with respect to transactions originally entered with such counterparty.

• Rule 16 is revised to clarify the current process with respect to transactions submitted to and compared by FICC, whereby in the event a member's original counterparty becomes insolvent, such member cannot unilaterally modify its obligations with respect to transactions originally entered with such counterparty.

• Rule 17, Section 2 is revised to clarify the current process whereby when FICC ceases to act for a clearing member, such member's Trade-for-Trade Transactions [16] may be disposed of based upon their generic terms such as agency, product, coupon rate and maturity. The other changes are typographical corrections.

• Rule 17A is revised to clarify that in the event of FICC's default, novation is deemed to have occurred with respect to all transactions at the time such transactions are compared, whether or not such transactions are SBO-Destined Trades that would otherwise have been novated at comparison. The other changes to this provision are grammatical corrections.

III. Discussion

Section 19(b)(2)(C) of the Act [17] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [18] requires, among other things, that the rules of a clearing agency be designed to achieve several goals, including promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.

The Commission concludes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act, and the rules and regulations thereunder, because by moving novation for trades that enter GSD's Netting system and MBSD's TBA Netting system, the rule change, as approved, should clarify FICC's responsibilities to its members and remove potential uncertainty that previously existed due to a mismatch between the time of guaranty and the time of novation. As a result, such clarity should further facilitate the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly those set forth in Section 17A,[19] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–FICC–2014–11) be, and hereby is, APPROVED.[21]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74134; File No. SR–CBOE–2015–005]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

January 26, 2015.

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 January 14, 2015, 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 changes to its Fees Schedule.[3]

COB Taker Surcharge

The Exchange proposes to implement a Complex Order Book (''COB'') Taker Surcharge. Specifically, the Exchange proposes to adopt a $0.05 per contract per side surcharge for non-customer complex order executions that take liquidity from the COB in all underlying classes except OEX, XEO, SPX (including SPXW), SPXpm, SRO, VIX, VXST, Volatility Indexes and binary options (''Underlying Symbol List A'') and mini-options. Additionally, the Exchange proposes to provide that the COB Taker Surcharge will not be assessed on non-customer complex order executions in the Complex Order Auction (''COA''), the Automated Aim Mechanism (''AIM''), orders originating from a Floor Broker PAR, or electronic

[16] Including ''stip'' trades and any other TBA transactions not intended for TBA Netting.

[17] 15 U.S.C. 78s(b)(2)(C).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 15 U.S.C. 78q–1.

[20] 15 U.S.C. 78s(b)(2).

[21] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on December 31, 2014 (SR–CBOE–2014–097). On January 14, 2015, the Exchange withdrew that filing and submitted this filing.

executions against single leg markets. The purpose of the COB Taker Surcharge is to help offset the rebate given to complex orders under the Volume Incentive Program (''VIP''). The Exchange notes that even with the additional surcharge, the amount of Exchange fees assessed for non-customer complex order-to-complex order executions that take liquidity are less than those assessed for similar transactions on certain other exchanges.[4]

CBOE Proprietary Products Sliding Scale

The CBOE Proprietary Products Sliding Scale table provides that Clearing Trading Permit Holder Proprietary transaction fees and transaction fees for Non-Clearing Trading Permit Holder Affiliates in OEX, XEO, SPX, SPXpm, VIX, VXST, and VOLATILITY INDEXES are reduced provided a Clearing Trading Permit Holder (''Clearing TPH'') reaches certain average daily volume (''ADV'') thresholds in all underlying symbols excluding Underlying Symbol List A and mini-options on the Exchange in a month. The Exchange proposes to implement two changes to the CBOE Proprietary Products Sliding Scale. First, the Exchange proposes to increase the current qualifying ADV thresholds. Specifically, the threshold 18,000 ADV to 71,999 ADV would be changed to 20,000 ADV to 79,999 ADV, and the threshold 72,000 ADV and above would be changed to 80,000 ADV and above. The purpose of the proposed change is to account for increased trading volume in multi-listed products across the industry. The Exchange also proposes to make corresponding changes related to the ADV thresholds to Footnote 23, which Footnote relates to the CBOE Proprietary Products Sliding Scale. The Exchange next proposes to increase the rates set forth in the B3 and B2 tiers (for Proprietary Product Volume from 0.00% to 8.50% of total Monthly Proprietary Product Firm (F) volume) by 2 cents and 5 cents, respectively, and the rate in the A2 tier (for Proprietary Product Volume from 0.00% to 6.50% of total Monthly Proprietary Product Firm (F) volume) by 1 cent. The proposed changes are further detailed below.

Current			Proposed		
Tier	Proprietary product volume thresholds	Transaction fee per contract	Tier	Proprietary product volume thresholds	Transaction fee per contract
≥18,000 ADV ≤71,999 ADV in multi list products			≥20,000 ADV ≤79,999 ADV in multi list products		
B3	0.00%–6.50%	$0.18	B3	0.00%–6.50%	$0.20
B2	6.51%–8.50%	0.05	B2	6.51%–8.50%	0.10
B1	Above 8.50%	0.02	B1	Above 8.50%	0.02
≥72,000 ADV in multi list products			≥80,000 ADV in multi list products		
A2	0.00%–6.50%	0.15	A2	0.00%–6.50%	0.16
A1	Above 6.50%	0.01	A1	Above 6.50%	0.01

The purpose of increasing the Transaction Fee Per Contract rates (and thereby reducing the amount of the discount Clearing TPHs may receive on proprietary products) is to moderate the discount levels for these products in view of their growth and performance. Particularly, the Exchange does not believe it's necessary to maintain the existing discounted rates for these tiers, but seeks to maintain an incremental incentive for Clearing TPHs to strive for the highest tier level.

Volume Incentive Program

The Exchange next proposes to amend the VIP rebate schedule. By way of background, under VIP, the Exchange credits each Trading Permit Holder (''TPH'') the per contract amount set forth in the VIP table resulting from each public customer (''C'' origin code) order transmitted by that TPH (with certain exceptions) which is executed electronically on the Exchange in all underlying symbols excluding Underlying Symbol List A, RUT, DJX, XSP, XSPAM, credit default options, credit default basket options and mini-options, provided the TPH meets certain volume thresholds in a month.[5]

The Exchange first proposes to reduce the VIP credit for complex orders in Tiers 2 and 3 from $0.17 per contract to $0.16. The purpose of this change is to adjust the incentive tiers accordingly as competition requires while maintaining an incremental incentive for TPH's to strive for the highest tier level.

The Exchange next proposes to implement a cap on VIP credits at 1,000 contracts per simple order executed electronically in AIM and 1,000 contracts per leg per complex order executed electronically in AIM.[6] The Exchange also proposes to cap orders executed electronically in the Hybrid Agency Liaison (''HAL'') mechanism at 1,000 contracts per auction quantity.[7] The Exchange is proposing to implement the cap on executions via AIM because the vast majority of orders over 1,000 contracts executed via AIM are traded primarily against the submitting contra party, for which the Exchange collects minimal revenue. Additionally, in HAL, the Exchange provides a HAL Step-Up Rebate[8] which reduces the collected net Exchange

[4] *See e.g.,* NYSE Arca, Inc. (''Arca'') Options Fees Schedule, page 7 (Electronic Complex Order Executions) which provides that for complex order-to-complex order transactions, non-customers are assessed $0.50 in penny pilot options and $0.85 in non-penny pilot options. Depending upon the type of market participant a CBOE TPH is, non-customer CBOE TPHs would be assessed between $0.08 and $0.65 (which includes the proposed surcharge) for such transactions (*see* CBOE Fees Schedule).

[5] Excluded from the VIP credit are options in Underlying Symbol List A, RUT, DJX, XSP, XSPAM, credit default options, credit default basket options, mini-options, QCC trades, public customer to public customer electronic complex order executions, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80 (*see* CBOE Fees Schedule, Volume Incentive Program).

[6] For example, a 750-lot butterfly spread would total 3,000 contracts. As each leg of the order is below 1,000 contracts, the Exchange would pay credits for each contract of each leg, totaling 3,000 contacts. If for example leg 1 of a complex order was for 600 contracts and leg 2 of the order was for 1,200 contracts, the Exchange would pay a VIP credit for a total of 1,600 contracts (*i.e.,* all 600 contracts on leg 1 and 1,000 contracts on leg 2).

[7] To demonstrate this cap, consider the following: a TPH submits an order for 1500 contracts. Of the 1500 contracts, 400 contracts execute electronically against a Market-Maker quote. The remaining 1,100 contracts are executed via HAL. The Exchange would pay credits for a total of 1,400 contracts (*i.e.,* the 400 contracts executed outside of HAL and 1,000 contracts executed in HAL).

[8] *See* CBOE Fees Schedule, Hybrid Agency Liaison (''HAL'') Step Up Rebate.

transaction fees to those market participants that qualify. The Exchange notes that generally, the parties which collect this credit have greater participation in larger orders. As such, it would not be viable for the Exchange to pay credits on contracts that do not create corresponding and offsetting revenue for the Exchange. The Exchange notes that all contracts executed in AIM (including complex AIM) and all contracts executed in HAL will continue to be counted towards the qualifying percentage thresholds, as the Exchange would like to continue to encourage the use of these price improvement mechanisms.

Finally with respect to VIP, the Exchange proposes to provide that multiple simple orders from the same TPH in the same series on the same side of the market that are received within three hundred (300) seconds and executed in AIM or HAL will be aggregated for purposes of determining the order quantity subject to the cap discussed above. For this aggregation, activity in AIM and HAL will be aggregated separately. The AIM aggregation timer will begin with an order entered into AIM and continue for 300 seconds, aggregating any other orders entered into AIM in the same series on the same side of the market by the same affiliated TPH. The HAL aggregation timer will begin at the start of a HAL auction and continue for 300 seconds, aggregating any other orders executed in HAL in the same series on the same side of the market for the same affiliated TPH. Any portion of the original order quantity that is executed outside of HAL will not be part of the aggregation or counted towards the 1,000 contract threshold. The Exchange believes this change should prevent TPHs from breaking up their orders in order to avoid the fee cap.

Finally, the Exchange proposes to relocate the language currently set forth in the Notes section of the VIP table to a new footnote (Footnote 36). In light of the additional language being added to the current Notes section of the VIP table, the Exchange believes the relocation of the existing language to a new and separate footnote will make the Fees Schedule easier to read. No substantive changes to the relocated language are being made.

SPX Customer Large Trade Discount

The Customer Large Trade Discount program (the ''Discount'') provides a discount in the form of a cap on the quantity of customer (''C'' origin code'') contracts that are assessed transactions fees in certain options classes. The Discount table in the Fees Schedule sets forth the quantity of contracts necessary for a large customer trade to qualify for the Discount, which varies by product. Currently, under the ''Products'' section in the Discount table, the following S&P products for which the Discount is in effect are listed: ''SPX, SPXw, SPXpm, SRO.'' Customer transaction fees for each of these products are currently only charged up to the first 10,000 contracts. The Exchange proposes to raise the quantity of SPX, SPXw, SPXpm, and SRO contracts necessary for a large customer trade to qualify for the Discount from 10,000 contracts per order to 15,000 contracts per order. The purpose of the proposed rule change is to moderate the discount level for Customer (C) orders in the SPX product group in view of its mature and established position in the industry.

Facility Fees Communications

The Exchange proposes to increase the Exchangefone relocation fee from $116 to $129. The Exchange contracts with a vendor to provide the Exchangefone relocations, and this vendor has increased its fees, so the Exchange proposes to increase the Exchangefone relocation fee to reflect the increased vendor cost.

The Exchange also proposes to eliminate certain telecommunication fees. The Exchange currently assesses monthly fees for three types of services the Exchange offers related to PhoneMail: (i) Basic Service, (ii) PhoneMail with Outcall and (iii) PhoneMail with Outcall & Pager. The Exchange notes that no TPHs have availed themselves of these services in a number of years. As such, the Exchange believes offering such services is no longer necessary and proposes to accordingly delete all fees for and references to such services from the Fees Schedule.

Floor Broker Workstation and PULSe Workstation

The Exchange proposes raising the Floor Broker Workstation (''FBW'') fee from $350 per month (per login ID) to $400 per month (per login ID). The Exchange's vendor that provides the FBW charges the Exchange more than $350 per month (per login ID) for the FBW (actually, more than $350 per month (per login ID), and the Exchange had been subsidizing those costs for FBW users. However, it is no longer economically feasible to subsidize those costs to that great an extent. As such, the Exchange proposes increasing the FBW fee to $400 per month (per login ID), which still includes a subsidy for FBW users (though smaller).

Additionally, the Exchange proposes to establish a FBW fee for an updated version of FBW (''FBW2''), which will be made available shortly to all TPHs. The fee for FBW2 will be the same as the existing FBW fee (*i.e.,* $400 per month (per login ID). The Exchange also proposes adopting a fee waiver for the months of January and February 2015. Additionally, the Exchange proposes to provide that, after March 1, 2015 the monthly fee for FBW2 login IDs will be waived for the first month.[9] The purpose of the proposed fee waivers is to give new users time to become familiar with and fully acclimated to the new FBW workstation functionality. The Exchange notes that after February 2015 (and absent an applicable fee waiver noted above), TPHs will be charged each of $400 for FBW and FBW2 (*i.e.,* total of $800) if such users continue to use both FBW and FBW2.

The Exchange also proposes raising the PULSe On-Floor Workstation (''PULSe'') fee. Currently, the Exchange charges a fee of $350 per month for the first 10 users of a TPH workstation and $100 per month for all subsequent users. TPHs may also make the workstation available to their customers, which may include non-broker dealer public customers and non-TPH broker dealers (referred to herein as ''non-TPHs''). For such non-TPH workstations, the Exchange charges a fee of $350 per month per workstation. The Exchange proposes raising the PULSe On-Floor Workstation fee from $350 per month to $400 per month for both TPH and non-TPH workstations. The Exchange expended significant resources developing PULSe, and intends to recoup some of those costs. Further, because PULSe and FBW serve similar functions, the Exchange desires to assess equivalent fees for each so as not to offer a pricing advantage for one over the other.

Proprietary Registration Fees

The Exchange next proposes to raise the Initial Proprietary Registration fee from $50 to $65 and the Annual Proprietary Registration fee from $25 to $40. The Initial Proprietary Registration fee is payable by any TPH organization for the registration of any associated person on WebCRD[10] with the Proprietary Trader registration. The Annual Proprietary Registration fee is payable annually by any TPH organization for each associated person

[9] For example, if a user adds a new login ID in March 2015, the user will receive a fee waiver for that login ID for March 2015.

[10] WebCRD is the Central Registration Depository system which is operated by the Financial Industry Regulatory Authority, Incorporated (''FINRA'').

that the TPH organization maintains registered on WebCRD with the Proprietary Trader registration. By way of background, the Exchange adopted these fees in conjunction with the implementation of the then new Proprietary Trading registration requirement (the ''Proprietary Trading Registration Program'' or ''Program''). These fees were adopted to recoup some of the costs expended to maintain the Program. The Exchange notes that the Proprietary Trading Registration Program continues to require on-going work, including testing and monitoring of the WebCRD system, as well as consideration of new applicants. In order to offset these increasing costs, the Exchange proposes to increase the Initial Proprietary Registration fee and the Annual Proprietary Registration fee.

CBOE Command Connectivity Changes

Next, the Exchange proposes to increase Network Access Port fees. By way of background, CBOE market participants can access the Exchange's trading systems via Network Access Ports, and can elect for a Network Access Port (or Ports) of either 1 gigabit per second (''Gbps'') or 10 Gbps. Currently, the Exchange assesses a fee of $500 per month for a 1 Gbps Network Access Port and a fee of $3,000 per month for a 10 Gbps Network Access Port. The Exchange has expended significant resources setting up, providing and maintaining this connectivity, and the costs related to such provision and maintenance has increased. The Exchange desires to recoup such increased costs. Therefore, the Exchange proposes to amend its Network Access Port fees to increase the fee for a 1 Gbps Network Access Port to $750 per month and for a 10 Gbps Network Access Port to $3,500 per month. These new fee amounts are still within the range of, and in some cases less than, similar fees assessed by other exchanges.[11]

The ''Notes'' section that describes the Network Access Port fees provides detail which states that ''Separate Network Access Port fees are assessed for unicast (orders, quotes) and multicast (market data) connectivity (*i.e.,* if a TPH uses the 1 Gbps Network Access Port for unicast and multicast connectivity, the TPH will be charged $1,000 per month and if a TPH uses the 1 Gbps Disaster Recovery Network Access Port for unicast and multicast connectivity, the TPH will be charged $500 per month.)''. The example provided above that states that, if a TPH uses the 1 Gbps Network Access Port for unicast and multicast connectivity, the TPH will be charged $1,000 per month, is based on the current 1 Gbps Network Access Port fee of $500 per month. Because the Exchange herein proposes to increase the fee for a 1 Gbps Network Access Port to $750 per month, the Exchange needs to also update the example to state that ''if a TPH uses the 1 Gbps Network Access Port for unicast and multicast connectivity, the TPH will be charged $1,500 per month . . .'' The proposed change will accurately reflect the proposed new fee amount and provide correct guidance to market participants reading the Fees Schedule.

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.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] 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 Section 6(b)(4) of the Act,[14] 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.

The Exchange believes that the proposal to adopt a $0.05 per contract per side surcharge for noncustomer complex order executions that remove liquidity from the COB is reasonable because although a surcharge is being added, the total amount assessed to these transactions is still within the range of fees paid by other market participants for similar transactions.[15] Further, other exchanges assess higher fees for complex orders than for noncomplex ones.[16] Applying the COB Taker Surcharge to all market participants except customers is equitable and not unfairly discriminatory because other market participants generally prefer to execute their orders against customer orders. By exempting customer orders, the COB Taker Surcharge will not discourage the sending of customer orders, and therefore there should still be plenty of customer orders for other market participants to trade with. Further, the options industry has a long-standing practice of assessing preferable fee structures to customers. Excluding from the COB Taker Surcharge options in Underlying Symbol List A is equitable and not unfairly discriminatory because the Exchange has devoted a lot of resources to develop its proprietary options classes, and therefore does not desire to risk discouraging the trading of such proprietary singly-listed options classes. Excluding mini-options from the COB Taker Surcharge is reasonable because the Exchange does not currently pay VIP credit for mini-options, so the economic differential which the COB taker fee is addressing (*i.e.,* offsetting the VIP complex order credits) is not present for mini-options. Excluding mini-options from the COB Taker Surcharge is not unfairly discriminatory because it will apply to all TPHs. Limiting the COB Taker Surcharge to orders entered electronically is equitable and not unfairly discriminatory because the Exchange has expended considerable resources to develop its electronic trading platforms and seeks to recoup the costs of such expenditures. The Exchange believes it is reasonable and not unfairly discriminatory to exclude complex orders that originate from a Floor Broker PAR station because such transactions are already subject to Floor Brokerage fees.[17] Additionally, Floor Brokers ensure that the difficult-to-execute orders (such as large and complex

[11] *See* International Securities Exchange, LLC (''ISE'') Schedule of Fees, Section VIII.B., which lists Network Ethernet fees of $750 per month for 1 Gigabit and $4,000 per month for 10 Gigabits, and a Network Ethernet—Low Latency fee of $7,000 per month for 10 Gigabits, *and see also* Miami International Securities Exchange LLC (''MIAX'') Options Fees Schedule, Section 5(a), which lists connectivity fees of $1,000 per month for 1 Gbps and $5,000 per month for 10 Gbps.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] *See e.g.,* NYSE Arca, Inc. (''Arca'') Options Fees Schedule, page 7 (Electronic Complex Order Executions) which provides that for complex order-to-complex order transactions, non-customers are assessed $0.50 in penny pilot options and $0.85 in non-penny pilot options. Depending upon the type of market participant a CBOE TPH is, non-customer CBOE TPHs would be assessed between $0.08 and $0.65 (which includes the proposed surcharge) for such transactions (*see* CBOE Fees Schedule).

[16] *See* ISE Schedule of Fees, Section I (which lists regular Maker rebates and fees and Taker fees for Select Symbols) as compared to Section II (which lists complex order fees and rebates for Select Symbols). Market participants are assessed higher fees for executing complex orders.

[17] *See* CBOE Fees Schedule, Floor Brokerage Fees.

orders) are able to be executed manually by accessing the CBOE's in-person market-maker crowds, while also helping to achieve price improvement and the Exchange does not want to discourage this activity. The Exchange notes that a similar exemption exists for the Hybrid 3.0 Surcharge. The Exchange believes that it is equitable and not unfairly discriminatory to only assess this surcharge to those removing liquidity from the market (''Takers'') and not Makers because the Exchange wants to continue to encourage market participation and price improvement. The Exchange next notes that when a Market-Maker submits a quote, the Market-Maker does not know whether it will trade with a simple or complex order. As such, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to exclude electronic executions against single leg markets because it wants to encourage Market-Makers to continue to provide trading opportunities and tight spreads, which they may be discouraged to do if there is a possibility they will be assessed a surcharge if and when their quotes fills against a complex order. Finally, the Exchange believes it's reasonable, equitable and not unfairly discriminatory to exclude from the COB Taker Surcharge executions in COA and AIM because the Exchange wants to continue to encourage price improvement via these functionalities and because this exclusion is applicable to all TPHs.

The Exchange believes the proposal to change the qualifying volume thresholds for the reduced fees in the CBOE Proprietary Products Sliding Scale is reasonable because the changes account for the increase in multi-listed trading volumes since the ADV thresholds were established. The Exchange believes it is equitable and not unfairly discriminatory because the proposed changes to the qualifying volume thresholds apply to all Clearing TPHs.

The Exchange believes increasing the rates in the B3, B2 and A2 tiers of the CBOE Proprietary Products Sliding Scale (and thereby reducing the overall discount) is reasonable because it still provides Clearing TPHs an opportunity to receive notable discounted rates on classes in Underlying Symbol list A for reaching certain qualifying volume thresholds that they would not otherwise receive (now just a smaller discount). Additionally, the Exchange notes that lower fees for executing more contracts is equitable and not unfairly discriminatory because it provides market participants with an incentive to execute more contracts on the Exchange. This brings greater liquidity and trading opportunity, which benefits all market participants. The Exchange believes that the proposed change is not unfairly discriminatory because it will apply to all Clearing TPHs that meet the qualifying volume thresholds. The Exchange also believes offering lower fees under the CBOE Proprietary Products Sliding Scale to Clearing TPHs and not other CBOE market participants is equitable and not unfairly discriminatory because Clearing TPHs must take on certain obligations and responsibilities, such as clearing and membership with the Options Clearing Corporation, as well as significant regulatory burdens and financial obligations, that other market participants are not required to undertake.

The Exchange believes it's reasonable to reduce the VIP credit for complex orders in Tiers 2 and 3 from $0.17 per contract to $0.16 because it is decreasing a mere $0.01 and it still provides an opportunity for TPHs to receive credits for complex orders for reaching certain qualifying volume thresholds that they would not otherwise receive (now just a smaller discount). The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies to all TPHs that meet the qualifying volume thresholds.

The Exchange believes that the proposal to implement a cap on VIP credits at 1,000 contracts per simple order and 1,000 contracts per leg per complex order for orders executed electronically in AIM and a cap of 1,000 contracts per auction quantity for orders executed in HAL is reasonable because in both cases the exchange collects little or no net transaction fees from the contra parties, and as such, the Exchange does not wish to also provide a credit on these transactions as it would result in the Exchange paying for such transactions without collecting any revenue (a net negative), which would not be economically prudent. Additionally, the Exchange believes the proposed cap is equitable and not unfairly discriminatory because it applies to all TPHs.

The Exchange believes it's reasonable, equitable and not unfairly discriminatory to provide that all contracts executed in AIM (including complex AIM) and all contracts executed in HAL will continue to be counted towards the percentage thresholds because the Exchange would like to continue to encourage the use of these price improvement mechanisms and because the proposed change would apply to all TPHs. The Exchange also believes its reasonable, equitable and not unfairly discriminatory to provide that multiple simple orders from the same TPH in the same series on the same side of the market that are received within three hundred (300) seconds will be aggregated for purposes of determining the order quantity subject to the cap, as the Exchange believes this should prevent TPHs from breaking up their orders in order to avoid the fee cap and it would apply to all TPHs.

The Exchange believes the relocation of the current language in the Notes section of the VIP table to a new Footnote of the Fees Schedule will make the Fees Schedule easier to read and avoid potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that raising the discount threshold for SPX (including SPXw), SPXPM and SROs is reasonable because customers will still be receiving a discount for large trades that they would not otherwise receive. This change is equitable and not unfairly discriminatory because all customers whose large trades qualify for the Discount will still receive it and the SPX product group has reached a mature and established level since its introduction while other products, such as VIX, have not.

The Exchange believes that the increased Exchangefone relocation fee is reasonable because the increase is being enacted to reflect an increase in the amount that a vendor charges the Exchange to provide the Exchangefone relocations. The Exchange believes that this change is equitable and not unfairly discriminatory because the increased Exchangefone relocation fee will apply to all market participants who request an Exchangefone relocation. Additionally, the Exchange believes the deletion of the PhoneMail services and fees is reasonable, equitable and not unfairly discriminatory because it merely removes fees associated with outdated services that have not been used by TPHs in a number of years.

Increasing the PULSe fee from $350 per month to $400 per month for the first 10 users of a TPH workstation and from $350 to $400 per month per workstation for non-TPH workstations is reasonable because the Exchange expended significant resources developing PULSe and desires to recoup some of those costs. Moreover, the Exchange will be assessing the same amount for the FBW, which is a similar product. This change is equitable and

not unfairly discriminatory because all market participants who desire to use PULSe will be assessed the same fee, and because the same amount is being assessed for use of a similar product, the FBW.

Increasing the FBW fee from $350 per month (per login ID) to $400 per month (per login ID) is reasonable because the Exchange is charged by the vendor that provides the FBW more than $350 per month (per login ID) and simply wants to reduce the extent to which the Exchange subsidizes such costs. This change is equitable and not unfairly discriminatory because all market participants who desire to use the FBW will be assessed the same fee.

Implementing a $400 per month (per login ID) for FBW2 is reasonable because the Exchange will be charged by the vendor that provides FBW2 more than $400 per month (per login ID) and again simply wants to reduce the extent to which the Exchange subsidizes these costs. This change is equitable and not unfairly discriminatory because all market participants who desire to use FBW2 will be assessed the same fee. The Exchange believes it is reasonable to provide a waiver for the months of January 2015 and February 2015 because it allows new users time to become familiar with and fully acclimated to the new FBW functionality and incentivizes the users to begin this process as soon as the new functionality becomes available. The Exchange believes it is reasonable to provide a waiver for the first month for a new login ID beginning March 1, 2015, because it allows a new user after February 2015 to fully acclimate to the new FBW functionality. The Exchange believes that the proposed changes regarding the fee waivers are equitable and not unfairly discriminatory because it applies to all new users of FBW2.

Increasing the Initial Proprietary Registration Fee from $50 to $65 and the Annual Proprietary Registration fee from $25 to $40 is reasonable because the Exchange continually expends resources in maintaining the Proprietary Trading Registration Program and desires to recoup some of the increasing costs. This change is equitable and not unfairly discriminatory because all market participants who register for the Proprietary Trader registration will be assessed the same fee.

The Exchange believes that the proposed changes to the Network Access Port fees are reasonable because the Exchange has expended significant resources setting up, providing and maintaining this connectivity, and the costs related to such provision and maintenance have increased. The Exchange merely desires to recoup such increased costs. The Exchange believes that the proposed changes to the Network Access Port fees are equitable and not unfairly discriminatory because the newly-increased fees will, as before, be applied in the same manner to all CBOE market participants (in that all CBOE market participants who seek a 1 Gbps Network Access Port will be assessed the new $750 per port per month fee, and all CBOE market participants who seek a 10 Gbps Network Access Port will be assessed the new $3,500 per port per month fee). Assessing a higher fee for 10 Gbps connectivity than for 1 Gbps connectivity is equitable and not unfairly discriminatory because 10 Gbps connectivity is more robust than 1 Gbps connectivity, and requires more costly equipment and maintenance, and the Exchange must recoup the costs related to providing such connectivity. Further, these new fee amounts are still within the range of, and in some cases less than, similar fees assessed by other exchanges.[18]

The Exchange believes that the proposed change to the example provided in the Notes section that describes the Network Access Port fees serves 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 by preventing any potential confusion regarding the application of the Network Access Port fees and the proposed new fee amounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees and rebates are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances (as described in the ''Statutory Basis'' section above). For example, Clearing TPHs have clearing obligations that other market participants do not have. Market-Makers have quoting obligations that other market participants do not have. There is a history in the options markets of providing preferential treatment to Customers, as they often do not have as sophisticated trading operations and systems as other market participants, which often makes other market participants prefer to trade with Customers. Further, the Exchange fees and rebates, both current and those proposed to be changed, are intended to encourage market participants to bring increased volume to the Exchange (which benefits all market participants), while still covering Exchange costs (including those associated with the upgrading and maintenance of Exchange systems).

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes are intended to promote competition and better improve the Exchange's competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange (while still covering costs as necessary). Further, the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written 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[19] and paragraph (f) of Rule 19b–4[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

[18] *See* ISE Schedule of Fees, Section VIII.B., which lists Network Ethernet fees of $750 per month for 1 Gigabit and $4,000 per month for 10 Gigabits, and a Network Ethernet—Low Latency fee of $7,000 per month for 10 Gigabits, *and see also* MIAX Options Fees Schedule, Section 5(a), which lists connectivity fees of $1,000 per month for 1 Gbps and $5,000 per month for 10 Gbps.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

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–2015–005 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–2015–005. 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–2015–005 and should be submitted on or before February 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–01753 Filed 1–29–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74142; File Nos. SR–FICC–2014–810; SR–NSCC–2014–811; SR–DTC–2014–812]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; National Securities Clearing Corporation; the Depository Trust Company; Notice of No Objection to Advance Notices, as Amended, To Amend and Restate the Third Amended and Restated Shareholders Agreement, Dated as of December 7, 2005

January 27, 2015.

On November 5, 2014, Fixed Income Clearing Corporation (''FICC''), National Securities Clearing Corporation (''NSCC''), and The Depository Trust Company (''DTC,'' together with FICC and NSCC, ''Clearing Agencies'') filed with the Securities and Exchange Commission (''Commission'') advance notices SR–FICC–2014–810, SR–NSCC–2014–811 and SR–DTC–2014–812 (''Advance Notices''), pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934.[2] On November 17, 2014, the Clearing Agencies each filed Amendments No. 1 to the Advance Notices.[3] On November 17, 2014 FICC withdrew Amendment No. 1 and filed Amendment No. 2 to advance notice SR–FICC–2014–810.[4] The Advance Notices, as amended, were published for comment in the **Federal Register** on December 11, 2014.[5] On December 31, 2014, the Commission published notice of its extension of the review period for the Advance Notices.[6] The Commission did not receive any comments on the Advance Notices. This publication serves as notice of no objection to the Advance Notices, as amended.

I. Description of the Advance Notices

The Advance Notices are a proposal by the Clearing Agencies, which are wholly owned subsidiaries of the Depository Trust and Clearing Corporation (''DTCC''), to amend and restate their Third Amended and Restated Shareholders Agreement, dated as of December 7, 2005 (''Existing Shareholders Agreement'')[7] — a single agreement covering all of the Clearing Agencies and their respective members and participants (''Members''). The Clearing Agencies state that the proposed revisions to the Existing Shareholders Agreement (''Revised Shareholders Agreement'') are the product of a comprehensive review by DTCC of its ownership, governance, and capital structure, undertaken for the purposes of increasing the financial resources available to support the conduct of the businesses of the Clearing Agencies and enhancing regulatory risk management.

With the Advance Notices of the Revised Shareholders Agreement, the Clearing Agencies propose: (1) To issue new common stock of DTCC (''Common Shares''), which mandatory common shareholders (''Mandatory Shareholders'')[8] will be required to purchase, upon approval by the DTCC Board of Directors (''Board'') and two-thirds of Mandatory Shareholders; (2) to buyback such newly issued Common Shares From Mandatory Shareholders, at the Board's discretion and approval; (3) to modify the formula for allocating Common Shares among shareholders (''Common Shareholders''); (4) to modify the formula for pricing the Common Shares; (5) to remove restrictions on the frequency with which DTCC can reallocate Common Shares; and (6) make other conforming and technical changes. Details of these proposed changes are summarized below.

[21] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] NSCC and DTC filed Amendment Nos. 1 to provide additional description of the changes proposed in advance notices SR–NSCC–2014–811 and SR–DTC–2014–812, respectively.

[4] FICC withdrew Amendment No. 1 to advance notice SR–FICC–2014–810 due to an error in filing the amendment. FICC filed Amendment No. 2 to advance notice SR–FICC–2014–810 in order to provide additional description of the changes proposed in the advance notice.

[5] Release No. 34–73755 (Dec. 5, 2014), 79 FR 73665 (Dec. 11, 2014).

[6] Release No. 34–73975 (Dec. 31, 2014), 80 FR 918 (Jan. 7, 2015).

[7] When the changes proposed in the Advance Notices become effective, the title of the Existing Shareholders Agreement will become the ''Fourth Amended and Restated Shareholders Agreement.''

[8] Pursuant to the Existing Shareholders Agreement and the rules of each of the Clearing Agencies, some Members, generally full-service Members, are required to own Common Shares (*i.e.,* Mandatory Shareholders) while other Members, generally limited-service Members, are permitted but not required to own such shares (''Voluntary Shareholders''). Further, certain Members are not permitted to purchase and own Common Shares or become parties to the Existing Shareholders Agreement.

A. Capital Raise Through the Sale of Newly Issued Common Shares to Mandatory Shareholders

Historically, the Clearing Agencies have operated on an at-cost or near-cost basis and rebated excess revenues to Members. Recently, however, the Clearing Agencies have experienced a greater need to increase capital to meet higher operating costs and, as systemically important financial market utilities (''SIFMUs''), to satisfy heightened risk-management requirements.

In order to raise capital for business purposes, the Revised Shareholders Agreement will enable DTCC to sell newly issued Common Shares to Mandatory Shareholders, who will be required to purchase such shares. The exercise of this new authority will require approval by the Board and two-thirds of the Mandatory Shareholders. The proceeds of the sale of the new issuance will be provided by DTCC to the Clearing Agencies as working capital. Voluntary Shareholders will not be required or permitted to purchase newly issued Common Shares.

DTCC states that it has performed extensive analyses to determine these needs and has considered alternative means to address them. DTCC deemed an increase in fees impractical because it would not necessarily generate sufficient resources in a reasonable period and fees depend on transactional volumes, which may be volatile. DTCC also was concerned with the financial burden that significant fee increases could place on Members over an extended period.

B. Mandatory Repurchase of Newly Issued Common Shares from Mandatory Shareholders

To allow flexibility to return capital to Mandatory Shareholders if the Clearing Agencies have excess, the Revised Shareholders Agreement will provide a mechanism under which DTCC may repurchase Common Shares from Mandatory Shareholders, on a mandatory basis, in an aggregate amount up to the aggregate amount of all newly issued Common Shares. Exercise of this new authority will be at the discretion of the Board.[9]

C. Updates to the Common Share Allocation Formula

The formula used to periodically reallocate entitlements to purchase Common Shares (''Allocation Formula'') is based on the historic development of DTCC.[10] The Allocation Formula provides that (i) 80% of the entitlement to purchase Common Shares is based on the amount of fees paid by a Member to the Clearing Agencies, and (ii) the remaining 20% of the entitlement is based on the average market value of all securities credited to the DTC account of that Member (''Long Positions'').

Today, all users of the Clearing Agencies pay fees to one or more of the Clearing Agencies based on usage of the services and facilities of the Clearing Agencies, including fees for Long Positions. Accordingly, DTCC has determined that it is no longer appropriate for the Allocation Formula to include both the market value of Long Positions and fees paid to DTC for such Long Positions. As such, the Revised Shareholders Agreement will update the Allocation Formula to eliminate the market value of Long Positions, so that the formula will be based solely on fees paid to the Clearing Agencies.

D. Amendments to the Common Share Price Formula

The price of Common Shares is used in connection with the purchase and sale of such shares among Common Shareholders in the periodic reallocation of Common Shares, as well as in connection with the transfer of the Common Shares of retiring or disqualified Common Shareholders.

Under the Existing Shareholders Agreement, the price of Common Shares is determined by a formula (''Pricing Formula'') that excludes a portion of the retained earnings of the Clearing Agencies from DTCC's book value, which DTCC argues is a vestige of the historical development of DTCC.[11] Additionally, the basis of the Pricing Formula is the full book value of DTCC, which includes intangibles such as goodwill.[12]

To make the price of the Common Shares more closely reflect the liquidation value of DTCC, the Revised Shareholders Agreement will make two amendments to the Pricing Formula. First, the formula will be updated to no longer exclude a portion of the retained earnings of the Clearing Agencies from DTCC's book value. Second, the formula will be updated to reflect the tangible book value of DTCC and the liquidation preference of the preferred stock of DTCC.

E. Amendments to the Frequency of Reallocating Common Shares

The reallocation of Common Shares among Common Shareholders is a means of aligning the entitlement to own such shares with the use of the Clearing Agencies by the Common Shareholders. The Existing Shareholders Agreement limits reallocations to no more than once a year, but no less than every three years.

To allow more frequent reallocations, the Revised Shareholders Agreement will permit reallocations to occur more than once a year, as determined by the Board, but still no less than once every three years.

F. Other Conforming and Technical Amendments to the Existing Shareholders Agreement

The Revised Shareholders Agreement will also include certain other technical amendments, including conforming and clarifying changes. For example, the Revised Shareholders Agreement will: (i) Amend the definition of ''Common Share Amount'' to clarify that the calculation does not include any fees that are pass-through fees (*i.e.,* amounts collected by one of the Clearing Agencies for the account of a third party and paid by that Clearing Agency to a third party); (ii) amend the definition of ''Settlement'' to move the time at which settlement is effected from 5:00 p.m. New York City Time on the Settlement Date, as such terms are defined in the Existing Shareholders Agreement, to 4:00 p.m. New York City Time on the Settlement Date;[13] (iii) update the definition of ''Deliver'' to include more convenient and contemporary methods of delivering notices, (*e.g.,* by electronic mail), as appropriate; and (iv) include Members of FICC's Mortgage-Backed Security Division (''MBSD''), other than Cash-Settling Bank Members (as such term is defined in the rules of MBSD),[14] within the definition of ''Mandatory Purchaser Participants.''

The Revised Shareholders Agreement also will amend the definition of ''Qualified Person,'' which sets forth the types of entities that may hold Common Shares, to exclude: (i) Federal Reserve

[9] The directors of the boards of FICC, NSCC, and DTC are the same as the Board's directors.

[10] *See* Release No. 34–73755 (Dec. 5, 2014), 79 FR 73665, 73667 (Dec. 11, 2014).

[11] *See id.*

[12] Intangible items of book value used in this calculation are shown on DTCC's Consolidated Statement of Financial Condition. DTCC Financial Statements, *available at http://dtcc.com/legal/financial-statements.aspx.*

[13] This is an operational change in order to align Common Share settlement times with the routine times of end of day settlement for each of the Clearing Agencies.

[14] MBSD Rules & Procedures, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf.* As a result of FICC becoming a central counterparty for transactions processed and cleared at MBSD, Release No. 34–66550 (Mar. 9, 2012), 77 FR 15155 (Mar. 14, 2012), the general rule that full-service Members, including users of guaranteed services, of one of the Clearing Agencies are Mandatory Purchaser Participants applies to Members of MBSD.

Banks because DTCC never intended that such governmental authorities should be required to own shares in DTCC, notwithstanding that they may use certain services of the Clearing Agencies; (ii) central counterparties or central securities depositories because these link arrangements are for the purpose of extending clearing agency services across borders, or among closely related activities and products, but not for ownership purposes; and (iii) any other financial market infrastructure or utility that the Board determines shall not be a Qualified Person.

Finally, the Revised Shareholders Agreement will provide that the pro-rata re-distribution of the Common Shares of a Common Shareholder that is no longer a Qualified Person to all other Common Shareholders takes place at the beginning of the following calendar year, rather than contemporaneously with such Common Shareholder ceasing to be a Qualified Person. This change reflects current practice and is more administratively practical.

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the Commission believes that the stated purpose of the Clearing Supervision Act is instructive.[15] The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[16]

Section 805(a)(2) of the Clearing Supervision Act[17] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act[18] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[19] (''Clearing Agency Standards'').[20] The Clearing Agency Standards became effective on January 2, 2013, and require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis. As such, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[21] The Commission believes that the proposed changes to the Existing Shareholders Agreement promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, and, thus, align with the stated purpose of the Clearing Supervision Act.

First, allowing DTCC to issue new Common Shares to Mandatory Shareholders for the purpose of infusing the Clearing Agencies with additional working capital will enable the Clearing Agencies, which are designated SIFMUs, to maintain operations for a longer period during times of financial stress. As such, the proposed change promotes the safety and soundness of the Clearing Agencies, reduces systemic risks presented by the Clearing Agencies, and supports the stability of the broader financial system.

Second, allowing DTCC to buy back newly issued Common Shares from Mandatory Shareholders will enable DTCC to return capital to those Members, most of which play substantial roles in the financial system, when the Clearing Agencies have excess capital. Therefore, the proposed change further supports the stability of the broader financial system by enabling capital to move from the Clearing Agencies back to Members when appropriate.

Third, the proposal to update the Allocation Formula to no longer account for securities held at DTC will more closely align the allocation of Common Shares with Common Shareholders' use of the Clearing Agencies. Therefore, ownership of the Clearing Agencies will more accurately reflect usage of the Clearing Agencies, which should further align risks and promote robust management at the Clearing Agencies.

Fourth, the proposal to update the Pricing Formula to (i) no longer exclude a portion of the retained earnings of the Clearing Agencies, and (ii) change the basis of the formula from DTCC's book value to its tangible book value will more accurately reflect the actual liquidation value of DTCC. By more accurately reflecting the liquidation value of DTCC, shareholders can more accurately account for the value of their shares and payments that they may make or receive in a future reallocation of Common Shares. Thus, the Mandatory and Voluntary Shareholders can better assess their financial position, promoting stability of the broader financial system.

Fifth, the proposal to allow for more than one reallocation of Common Shares among Common Shareholders per year will enable DTCC to contemporaneously align ownership of Common Shares with Common Shareholders' usage of the Clearing Agencies as needed. Similar to the proposed change to the Allocation Formula, discussed above, the ability to allocate Common Shares more often helps ensure that ownership of the Clearing Agencies more accurately reflects use of the Clearing Agencies, which should further promote robust risk management at the Clearing Agencies.

Sixth, the technical and conforming changes to the Shareholders Agreement will make the Shareholders Agreement more consistent, current, and clear, which promotes a more safe and sound execution of the agreement by DTCC and its applicable Members.

Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[22] that the Commission *does not object* to advance notices SR–FICC–2014–810, SR–NSCC–2014–811, and SR–DTC–2014–812, as amended, and that FICC, NSCC, and DTC be and hereby are *authorized* to implement the changes contained in their respective advance notices as of the date of this notice.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2015–01791 Filed 1–29–15; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* 12 U.S.C. 5461(b).

[16] *Id.*

[17] 12 U.S.C. 5464(a)(2).

[18] 12 U.S.C. 5464(b).

[19] 12 U.S.C. 5464(a)(2).

[20] Rule 17Ad–22, 17 CFR 240.17Ad–22. Release No. 34–68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012).

[21] 12 U.S.C. 5464(b).

[22] 12 U.S.C. 5465(e)(1)(I).

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Warehouse Instantly Adjustable Racking Systems.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a class waiver of the Nonmanufacturer Rule for Warehouse Instantly Adjustable Racking Systems. On October 2, 2014, SBA received a request that a class waiver be granted for Warehouse Instantly Adjustable Racking Systems under the North American Industry Classification System (NAICS) code 332999 (Miscellaneous Fabricated Metal Product Manufacturing), Product Service Code (PSC) 5450 (Miscellaneous Prefabricated Structures). According to the request, no small business manufacturers supply this class of products to the Federal government. Thus, SBA is seeking information on whether there are small business warehouse instantly adjustable racking systems manufacturers. If granted, the waiver would allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses, Women-Owned small businesses (WOSB), Economically Disadvantaged Women-Owned small businesses (EDWOSB), or Participants in the SBA's 8(a) Business Development (BD) program.

DATES: Comments and source information must be submitted February 17, 2015.

ADDRESSES: You may submit comments and source information to Amy Garcia, Procurement Analyst, Small Business Administration, Office of Government Contracting, 409 3rd Street SW., Suite 8800, Washington, DC 20416; or by way of email to the Nonmanufacturer Rule Waiver program office at *NonMfgRuleWaiverReqsts@sba.gov*. Email communications should contain ''Class Waiver—IAR Systems'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Garcia, Procurement Analyst, by telephone at (202) 205–6842; by FAX at (202) 481–1630; or by way of email to the Nonmanufacturer Rule Waiver program office at *NonMfgRuleWaiverReqsts@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations require that recipients of Federal supply contracts set aside for small businesses, SDVO small businesses, WOSBs, EDWOSBs, or Participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(c). The SBA defines ''class of products'' based on the Office of Management and Budget's NAICS.

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Warehouse Instantly Adjustable Racking Systems under the North American Industry Classification System (NAICS) code 332999 (Miscellaneous Fabricated Metal Product Manufacturing), Product Service Code (PSC) 5450 (Miscellaneous Prefabricated Structures). The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for the product within 15 days after date of publication in the **Federal Register** and on FedBizOpps.gov. More information about the Nonmanufacturer Rule and Class Waivers may be found on SBA's Web site at *https://www.sba.gov/category/navigation-structure/contracting/contracting-officials/non-manufacturer-waivers*.

Dated: January 20, 2015.

Seán F. Crean,

Director, Office of Government Contracting.

[FR Doc. 2015–01627 Filed 1–29–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 9019]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA Committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of a meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

Date and Time: The meeting will be held on Friday, February 13, 2015, from 9:00 a.m. to 1:00 p.m.

Location: The American Institute of Architects, Board Room, 1735 New York Avenue NW., Washington, DC 20006.

Public input: Any member of the public interested in providing public input to the meeting should contact Ms. Shereece Robinson, whose contact information is listed under *for further information* section of this notice. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, email or fax) prior to the close of business on Friday, February 6, 2014; written comments from members of the public for distribution at this meeting must reach Ms. Robinson by letter, email or fax by this same date. A member of the public requesting reasonable accommodation should make the request to Ms. Robinson by that same date.

Meeting agenda: The agenda of the meeting will include: An update on developments at the Universal Postal Union, a report from the Customs subcommittee and further consideration of the terminal dues proposals offered at the meeting of September 29, 2014. A full agenda and meeting documents will be posted on the Committee Web site at *www.state.gov/p/io/ipp/mtgs/index.htm* as they become available.

For further information, please contact Ms. Shereece Robinson of the Office of Specialized and Technical Agencies (IO/STA), Bureau of International Organization Affairs, U.S. Department of State, at tel. (202) 647–1044, FAX (202) 647–8902, by email at *RobinsonSA2@state.gov* or by mail at IO/STA, Room 5333 HST; U.S. Department of State; Washington DC 20520–6319.

Dated: January 26, 2015.

Joseph P. Murphy,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services, Office of Specialized and Technical Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 2015–01806 Filed 1–29–15; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 9020]

Overseas Security Advisory Council Meeting Notice

Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 24 and 25, 2015. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), and 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: January 16, 2015.

Bill A. Miller,

Director of the Diplomatic, Security Service, U.S. Department of State.

[FR Doc. 2015–01788 Filed 1–29–15; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 33–10, Considerations for Comparative Test and Analysis Based Compliance Findings for Turbine Engine and Auxiliary Power Unit Replacement, Redesign and Repaired Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of withdrawal of AC 33–10, Considerations for Comparative Test and Analysis Based Compliance Findings for Turbine Engine and Auxiliary Power Unit Replacement, Redesign and Replacement Parts.

SUMMARY: This notice announces the withdrawal of the guidance offered in AC 33–10 so it can be revised.

FOR FURTHER INFORMATION CONTACT: Mark Bouyer, FAA, Rulemaking and Policy Branch, ANE–111, Engine and Propeller Directorate Standards Staff, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7755; fax: 781–238–7199; email: *mark.bouyer@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

We are withdrawing Advisory Circular 33–10 to restructure the content and to clarify its intended purpose.

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

Issued in Burlington, Massachusetts, on January 23, 2015.

Colleen D'Alessandro,

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

[FR Doc. 2015–01799 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting: RTCA Special Committee 231, Special Committee 231 TAWS

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

ACTION: Meeting Notice of RTCA Special Committee 231, TAWS.

SUMMARY: The FAA is issuing this notice to advise the public of the fourth meeting of the RTCA Special Committee 231, TAWS.

DATES: The meetings will be held March 24–26 2015 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meetings will be held at RTCA Headquarters, RTCA, Inc., 1150 18th Street NW., Suite 910, Washington DC 20036

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 231. The agenda will include the following:

March 24th—9:00a.m.–5:00p.m.

- Welcome/Introduction
- Administrative Remarks
- Agenda Review
- Summary of Working Group activities
- Other Business
- Date and Place of Next Meeting

March 25th—9:00a.m.–5:00p.m.

- Continuation of Plenary or Working Group Session

March 26th—9:00a.m.–3:00p.m.

- Continuation of Plenary or Working Group Session

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 27, 2015.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–01825 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Third Meeting: RTCA Special Committee 217—Aeronautical Databases Joint With EUROCAE WG–44—Aeronautical Databases

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

ACTION: Notice of RTCA Special Committee 217—Aeronautical Databases Joint with EUROCAE WG–44—Aeronautical Databases.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 217—Aeronautical Databases being held jointly with EUROCAE WG–44—Aeronautical Databases.

DATES: The meeting will be held March 2–6, 2015 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be hosted by Honeywell, Grand Hotel Bohemia,

110 00 Praha 1, Kralodvorska 4 Czech Republic.

FOR FURTHER INFORMATION CONTACT: Sophie Bousquet, *SBousquet@rtca.org,* 202–330–0663 or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* Pre-registration for the meeting is required to access Honeywell's Prague facility. Please send the following information to Scott Roesch (*Scott.Roesch@Honeywell.com*) and copy Sophie Bousquet (*sbousquet@rtca.org*) by February 13, 2015: Name, Company, Nationality, Passport Number and Expiration Date.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 217—Aeronautical Databases held jointly with EUROCAE WG–44—Aeronautical Databases. The agenda will include the following:

Monday, March 2nd

- Opening Plenary Session
- Co-Chairmen's remarks, introductions and Housekeeping
- Approve minutes from 22nd meeting
- Review and approve meeting agenda for 23rd meeting
- Review of joint WG–1/WG–2 Action Items

Tuesday, March 3rd Through Thursday, March 5th

- Working Group One (WG1)—Rev DO–200A—Stephane Dubet
  - DO–200B (ED–76A) Open Consultation/FRAC resolution
  - Overview of comments received (by FRAC Preparation Team)
- Working Group Two (WG2)—DO–272/DO–276/DO–291—John Kasten
  - Final work on Documents and review before FRAC
  - Schedule for FRAC release and associated actions

Friday Morning, March 6th

- Approval of Rev DO–200A (ED–76) for the PMC/TAC-Council
- Approval of Rev DO–272/DO–276/DO–291 for FRAC—Open Consultation
- Working arrangements for the remaining work and Review of action items
- Next meetings, dates and locations
- Any other business and Adjourn

Pre-registration for the meeting itself is required, if you have not already done so, please provide your information to Sophie Bousquet, *sbousquet@rtca.org.* Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 27, 2015.

Mohannad Dawoud,

Management Analyst, Program Oversight and Administration, ANG–A15, Federal Aviation Administration.

[FR Doc. 2015–01824 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirteenth Meeting: RTCA Special Committee 227, Standards of Navigation Performance

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

ACTION: Meeting Notice of RTCA Special Committee 227, Standards of Navigation Performance.

SUMMARY: The FAA is issuing this notice to advise the public of the thirteenth meeting of the RTCA Special Committee 227, Standards of Navigation Performance.

DATES: The meeting will be held March 16–20 from 9:00 a.m.–4:30 p.m.

ADDRESSES: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662 or (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* In addition, Sophie Bousquet may be contacted directly at email: *sbousquet@rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 227. The agenda will include the following:

March 16–20, 2015

- Welcome/Introductions/Administrative Remarks
- Agenda Overview
- Overview of Planned Work Program for the Week
  - Working Group 2 MOPS Change Proposals
  - MOPS Draft Review
  - SC–186 proposed addition to MASPS Appendix
- Plenary Review/Discussion
  - Planned Work Schedule (Note, schedule subject to change)
  - MOPS Change Proposals for Incorporation into draft MOPS
- Technical Requirements Breakout Sessions (as needed)
- Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 27, 2015.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–01829 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourteenth Meeting: RTCA NextGen Advisory Committee (NAC)

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

ACTION: Fourteenth Meeting Notice of RTCA NextGen Advisory Committee

SUMMARY: The FAA is issuing this notice to advise the public of the fourteenth meeting of the RTCA NextGen Advisory Committee.

DATES: The meeting will be held February 26, 2015 from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at Delta Air Lines, Inc. New York City Room 1010 Delta Blvd. Atlanta, GA 30354.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* Andy Cebula, NAC Secretary can also be contacted at *acebula@rtca.org* or 202–330–0652.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

February 26th

• Opening of Meeting/Introduction of NAC Members—Chairman Richard Anderson, Chief Executive Officer, Delta Air Lines, Inc.
• Official Statement of Designated Federal Official—The Honorable Mike Whitaker, FAA Deputy Administrator
• Review and Approval of October 8, 2014 Meeting Summary and Revised Committee Terms of Reference
• Chairman's Report—Chairman Anderson
• FAA Report—Mr. Whitaker
• Atlanta Multiple Runway Operations Implementation Experience—Benefits story of Multiple Runway Operations/Recategorization at ATL
• Open Discussion: NextGen Implementation—What does success look like for NextGen implementation?
• NextGen Integration Working Group (NIWG) FAA and Industry Leaders Oversight, Monitoring and Tracking Process
• NIWG Surface Report Out
• NIWG Data Comm Report Out
• NIWG Performance Based Navigation Report Out
• NIWG Multiple Runway Operations Report Out
• Summary of meeting and next steps—DFO and NAC Chairman Closing Comments
• Other business
• Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 27, 2015.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–01801 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting: RTCA Special Committee 229, 406 MHz Emergency Locator Transmitters (ELTs) Joint With EUROCAE WG–98 Committee

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

ACTION: Fourth meeting 406 MHz Emergency Locator Transmitters (ELTs) Joint with EUROCAE WG–98 Committee.

SUMMARY: The FAA is issuing this notice to advise the public of the fourth meeting of the 406 MHz Emergency Locator Transmitters (ELTs) Joint with EUROCAE WG–98 Committee.

DATES: The meeting will be held April 21–23 2015 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held AIRBUS, Kreetslag 10, 21129 Hamburg, Germany.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or you may contact Sophie Bousquet, *sobousquet@rtca.org,* 202–330–0663.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

Tuesday April 21 2015 (9:30 a.m.–5:00 p.m.)

• Welcome/Introductions/ Administrative Remarks
• Agenda overview and approval
• Minutes Washington, DC meeting review and approval
• Briefing of ICAO and COSPAS–SARSAT activities
• WG 1 to 4 status and week's plan
• Other Industry coordination and presentations
• WG meetings (rest of the day)

Wednesday April 22nd 2015 (9 a.m.–5 p.m.)

• WG 1 to 4 meetings

Thursday April 23rd 2015

• WGs' reports
• Action item review
• Future meeting plans and dates
• Industry coordination and presentations (if any)
• Other business
• Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 27, 2015.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2015–01833 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Ted Stevens Anchorage International Airport, Anchorage, Alaska.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for Public Comments.

SUMMARY: The FAA is considering a proposal to change approximately 40 acres of airport land from aeronautical use to non-aeronautical use at Ted Stevens Anchorage International Airport, Anchorage, Alaska. It is determined through study and master planning that the property will not be needed for aeronautical purposes for the foreseeable future as this portion of the parcel is not contiguous with the airport proper and is significantly geographically separated from the operational areas of the airport. A change to non-aeronautical use does not exclude aeronautical activities in this area in the future.

DATES: Comments must be received on or before March 9, 2015.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Pat Oien, Alaskan Region Airports Division, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, Alaska 99513–7587 (phone 907–271–5445). In addition, one copy of the comment submitted to the FAA must be mailed or delivered to: Teri Lindseth, Planning Manager, TSAIA, P.O. Box 196960, Anchorage, AK 99519–6960 (phone 907–266–2544).

SUPPLEMENTARY INFORMATION: Under the provisions of Title 49, U.S.C. Section 47153(c), this notice is being published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds.

Ted Stevens Anchorage International Airport was conveyed this property on April 22, 2014, from the Federal government for use as a public airport.

Legal Description: Lot 6, Section 4, Township 12 North, Range 4 West, Seward Meridian, State of Alaska.

Issued in Anchorage, Alaska on January 26, 2015.

Byron K. Huffman,

Manager, Airports Division, Alaskan Region.

[FR Doc. 2015–01823 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Gaylord Regional Airport; Gaylord, Michigan.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at Gaylord Regional Airport, Gaylord, Michigan. The proposal consists of 12.38 acres of airport property for which the current use and present condition is the Libke Field recreational facility.

DATES: Comments must be received on or before March 2, 2015.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174 or at Gaylord Regional Airport, Gaylord, Michigan. Written comments on the Sponsor's request must be delivered or mailed to: Diane Morse, Program Manager, Detroit Airports District Office, Federal Aviation Administration, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: (734) 229–2929/FAX Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Diane Morse, Program Manager, Detroit Airports District Office, Federal Aviation Administration, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: (734) 229–2929/FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

Parcel 21 (0.83 acres) was acquired by Gaylord Regional Airport through the Airports Improvement Program dated January 6, 1992. Parcel 8 (11.55 acres) was purchased from the State of Michigan, Department of Conservation without federal funds on July 11, 1966. The Otsego County Board of Commissioners intends to purchase the property, at fair market value, for continued use as Libke Field recreational facility. The aforementioned land is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the airport to dispose of the property. This notice announces that the FAA is considering the release of the subject airport property at Gaylord Regional Airport, from all federal land covenants. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

Following is a legal description of the property situated in the State of Michigan, County of Otsego, A combined parcel of land situated in the Township of Bagley, County of Otsego, State of Michigan, being part of the Northeast ¼ of the Northeast ¼ of Section 7, Town 30 North, Range 3 West, described as:

Commencing at the Northeast corner of said Section 7; thence North 88°42′30″ West, along the North line of said section, 146.04 feet to the Point of Beginning; thence South 00°33′57″ West 477.76 feet; thence North 88°58′17″ West 1119.09 feet; thence North 00°14′04″ West 483.03 feet to the North line of said section; thence South 88°42′30″ East, along said section line, 1125.89 feet to the Point of Beginning. Sold parcel contains 12.38 acres of land, more or less, and is subject to the right of way of Van Tyle Road over the northerly 33 feet thereof.

Issued in Detroit, Michigan, on January 12, 2015.

John L. Mayfield, Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2015–01759 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on the Proposed Highway in Georgia [Northwest I–75/I–575 Corridor, Cobb and Cherokee Counties, Georgia (Atlanta Metropolitan Area)]

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitations on Claims for Judicial Review of Actions by Army Corps of Engineers (USACE), DOD and Other Federal Agencies.

SUMMARY: This notice announces actions taken by USACE and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The action relates to the Northwest (I–75/I–575) (from Akers Mill Road to Hickory Grove Road on Interstate 75 (I–75) and from I–75 to Sixes Road on I–575) located in Cobb and Cherokee Counties, Georgia. The approximate length of the project is 29.7 miles. Those actions grant licenses, permits and approvals for the project.

DATES: By this notice, the FHWA is advising the public of the final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency action on the highway project will be barred unless the claim is filed on or before June 29, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Barry, Division Administrator, Georgia Division, Federal Highway Administration, 61 Forsyth Street, Suite 17T100; Atlanta, Georgia 30303; FHWA's normal business hours are 8:00 a.m. to 5:00 p.m. (eastern time) Monday through Friday, 404–562–3630; email: *Rodney.Barry@dot.gov.* For USACE: Edward Johnson, Chief, Regulatory Branch, U.S. Army Corps of Engineers, Savannah District-Piedmont Branch, 1590 Adamson Parkway, Suite 200, Morrow, Georgia 30260–1777; telephone (678) 422–2235, Email: *Edward.B.Johnson@usace.army.mil.* USACE's normal business hours are 8:00 a.m. to 5:00 p.m. (Eastern time) Monday through Friday. For Georgia Department of Transportation (GDOT): Mr. Russell McMurray, Commissioner, Georgia Department of Transportation, 600 West Peachtree Street, 22th Floor, Atlanta, Georgia 30308, 8:00 a.m. to 5:00 p.m. (eastern time) Monday through Friday, Telephone: (404) 631–1005, Email: *RMcMurray@dot.ga.gov.*

SUPPLEMENTARY INFORMATION: On May 30, 2013, the FHWA published a ''Notice of Final Federal Agency Actions on Proposed Highway in Georgia the Northwest I–75/I–575 Corridor, Cobb and Cherokee Counties, Georgia (Atlanta Metropolitan Area) in the **Federal Register** at [78 FR 32530] for the following highway project: The Northwest Corridor (from Akers Mill Road to Hickory Grove Road on Interstate 75 (I–75) and from I–75 to Sixes Road on I–575) located in metropolitan Atlanta, Georgia. The Selected Alternative will extend the two-I–75 managed lanes that currently terminate Akers Mill Road south of the I–75/I–285 interchange. Two managed lanes would extend north to the I–75/I–575 interchange. A single managed lane would continue north on I–75 from the I–75/I–575 interchange to just beyond Hickory Grove Road. A single managed lane would continue north on I–575 from the I–75/I–575 interchange to the Sixes Road interchange. The facility will include improvements of approximately 16.8 miles on I–75, 11.3 miles on I–575 and 1.6 miles on I–285. The facility will be tolled by electronic toll lane (ETL). The actions by the Federal agencies and the laws under which such actions were taken are described in the Final Environmental Impact Statement (FEIS) and the reevaluation of the FEIS for the Northwest Corridor Project, approved on October 12, 2011 and March 18, 2013 respectively, a FHWA Record of Decision (ROD) issued on May 23, 2013. Notice is hereby given that, subsequent to the earlier FHWA notice, the USACE has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing permits and approvals for the highway project. The actions by the USACE, related final actions by other Federal agencies, and the laws under which such actions were taken, are described in the USACE decisions and its project records, referenced as [SAS–2011–00754].

Information about the project and project records also are available from FHWA and the Georgia Department of Transportation at the addresses provided above. The FHWA National Environmental Policy Act (NEPA) documents such as the Supplemental Draft Environmental Impact Statement (SDEIS), Final Environmental Impact Statement (FEIS), FEIS Reevaluation and the Record of Decision (ROD) can be viewed and downloaded from project Web site at *http://www.nwcproject.com* or viewed at GDOT's Northwest Corridor Field Office. The office is located at 889 Franklin Road, Suite 180, Marietta, GA 30067. The USACE decision can be viewed and downloaded from the project Web site at *http://www.nwcproject.com* or viewed at GDOT's Northwest Corridor Field Office. The office is located at 889 Franklin Road, Suite 180, Marietta, GA 30067.

This notice applies to all USACE and other Federal agency final actions taken after the issuance date of the FHWA **Federal Register** notice described above. The laws under which actions were taken include, but are not limited to:

1. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 [Section 404, Section 401, Section 319]; 33 U.S.C. 408 Section 14; 33 CFR 208.10; Safe Drinking Water Act [42 U.S.C. 300f *et seq.*]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]. Flood Disaster Protection Act [42 U.S.C. 4001–12].

Executive Orders: E.O. 11990, Protection of Wetlands; TEA–21 Wetlands Mitigation (Sections 103 and 133) [23 U.S.C. 103(b)(6)(m), 133(b)(11)].

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1), as amended by Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, § 1308, 126 Stat. 405 (2012).

Issued on: January 26, 2015.

Rodney Barry,

Division Administrator, Atlanta, Georgia.

[FR Doc. 2015–01821 Filed 1–29–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2015–0010]

Notice and Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on November 25, 2014, 79 FR 70275–70276.

DATES: Comments must be submitted on or before March 2, 2015.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is 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 estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Randy Reid, Office of Defects Investigation (NVS–210), National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., W48–311, Washington, DC 20590. Randy Reid's phone number is 202–366–4383 and his email address is *randy.reid@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from

OMB Control Number: 2127–0008.

Title: Consumer Complaint Information.

Type of Request: Extension of a currently approved collection.

Abstract: Chapter 301 of title 49 of the United States Code, the Secretary of Transportation is authorized to require manufacturers of motor vehicles and motor vehicle equipment to conduct owner notification and remedy, *i.e.,* a recall campaign, when it has been determined that a safety defect exists in the performance, construction, components, or materials in motor vehicles and motor vehicle equipment. To make this determination, the National Highway Traffic Safety Administration (NHTSA) solicits information from vehicle owners which is used to identify and evaluate possible safety-related defects and provide the necessary evidence of the existence of such a defect. Under the Authority of chapter 301 of Title 49 of the United States Code, the Secretary of Transportation is authorized to require manufacturers of motor vehicle and motor vehicle equipment which do not comply with the applicable Federal motor vehicle safety standards or contains a defect that relates to motor vehicle safety to notify each owner that their vehicle contains a safety defect or noncompliance. Also, the manufacturer of motor vehicle replacement equipment presented for remedy pursuant to such notification shall cause such defect or noncompliance to be remedied without charge. In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer shall cause the vehicle remedied by whichever of the following means he elects: (1) By repairing such vehicle; (2) by replacing such motor vehicle without charge; or (3) by refunding the purchase price less depreciation. To ensure these objectives are being met, NHTSA audits recalls conducted by manufacturer. These audits are performed on a randomly selected number of vehicle owners for verification and validation purposes.

Affected Public: Individuals and Households.

Estimated Total Annual Burden Hours: 11,814.

Number of Respondents: 47,256.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Randy Reid,

Chief, Correspondence Research Division, Office of Defects Investigation.

[FR Doc. 2015–01780 Filed 1–29–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MCF 21061]

Frank Sherman, FSCS Corporation, TMS West Coast, Inc., Evergreen Trails, Inc., and Horizon Coach Lines NC Inc.—Intra-Corporate Family Transaction Exemption

Frank Sherman, FSCS Corporation (FSCS), Evergreen Trails, Inc. (Evergreen), TMS West Coast, Inc. (TMS), and Horizon Coach Lines NC Inc. (Horizon NC) (collectively, Applicants), have filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1182.9.[1] Frank Sherman is an individual who controls motor passenger carrier Evergreen and is the controlling shareholder of FSCS. Evergreen, which conducts its motor passenger carrier operations using d/b/a/ Horizon Coach Lines, is directly owned by the noncarrier holding company TMS, which in turn is owned by the noncarrier holding company FSCS. Horizon NC is directly owned by FSCS. Currently, Horizon NC is not operating as a motor carrier and does not hold any motor carrier assets. Both Horizon NC and Evergreen are ultimately controlled by Mr. Sherman.

Applicants state that the purpose of this reorganization is to enhance the efficiency of the North Carolina operations and avoid certain costs that would otherwise be incurred if Evergreen continued to conduct the operations. This notice will permit a transaction to go forward that will allow Horizon NC, an affiliate of Evergreen, to acquire and operate Evergreen's North Carolina assets, including its intrastate operating authority, motor carrier passenger services, and certain key management personnel. This transaction will allow Evergreen to limit its reporting obligations in North Carolina to drivers and operations statewide, rather than nationwide. Applicants state that there would be no change in services currently offered or the management and assets used to provide these services. Applicants point out that the existing services being performed by Evergreen and its assets would simply be controlled by a different corporate entity within Evergreen's corporate family.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1182.9. Applicants state that the transaction has not and will not result in any change in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family. Applicants also state that (1) Horizon NC will acquire control of Evergreen's North Carolina assets through an internal arrangement that will be entered into between Horizon NC and Evergreen, and (2) the only effect on employees is that employees currently employed by Evergreen in North Carolina will be employed Horizon NC.

Applicants state that the transaction will not be consummated until at least seven days after the filing date of the verified notice of exemption. The notice was filed on December 31, 2014; therefore, consummation could occur on or after January 7, 2015.

If the verified notice contains false or misleading information, the Board shall summarily revoke the exemption and require divestiture. Petitions to revoke the exemption under 49 U.S.C. 13541(d) may be filed at any time. *See* 49 CFR 1182.9(c).

An original and ten copies of all pleadings, referring to Docket No. MCF 21061, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 26, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–01742 Filed 1–29–15; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board has exempted intra-corporate family transactions of motor carriers of passengers that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family in *Class Exemption for Motor Passenger Intra-Corporate Family Transactions,* FD 33685 (STB served Feb. 18, 2000).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35899]

Burlington Shortline Railroad, Inc., d/b/a Burlington Junction Railway—Operation Exemption—Rail Line of the City of Le Mars, Iowa

Burlington Shortline Railroad, Inc., d/b/a Burlington Junction Railway (BSLR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 5,600 feet of certain private industry track located inside an industrial park owned by the City of Le Mars, Iowa (the City).[1]

BSLR states that it has executed a Switching Services Agreement with the City giving it the exclusive right to provide switching services over the track owned by the City and over connecting industry-owned track. BSLR further states that it will provide all common carrier rail services, replacing industrial switching services that the Chicago Central & Pacific Railroad Company currently provides.

BSLR states that there are no agreements applicable to the line imposing any interchange commitments.

BSLR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class II or Class I rail carrier and will not exceed $5 million.

BSLR states that it intends to consummate the proposed transaction on or after April 1, 2015. The transaction may be consummated on or after February 13, 2015, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 6, 2015 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35899, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 26, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2015–01737 Filed 1–29–15; 8:45 am]

BILLING CODE 4915–01–P

[1] According to BSLR, there are no mileposts associated with the line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35881]

South Carolina Division of Public Railways d/b/a Palmetto Railways—Change in Operators Exemption—North Charleston Terminal Company

South Carolina Division of Public Railways d/b/a Palmetto Railways (Palmetto), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to assume operation of rail trackage, known as the Cosgrove Yard, consisting of approximately 9.3 miles of track on 20.17 acres of property north of Interstate 526 in North Charleston, S.C. Palmetto states that the Cosgrove Yard is currently leased to North Charleston Terminal Company (NCTC) [1] and operated by NCTC's owners, CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR).

Palmetto notes that NCTC, CSXT, and NSR are finalizing and will shortly execute an agreement providing for the assignment of their respective common carrier interest in the Cosgrove Yard to Palmetto, which intends to assume its operation. As part of the proposed transaction, Palmetto states that NCTC, CSXT, and NSR will retain the right to use a portion of the Cosgrove Yard tracks for through movements to and over the track known as the TC Lead to continue to serve directly the Joint Base Charleston TC Dock rail yard operated by the U.S. Department of Defense in North Charleston, S.C.[2] Once the proposed transaction is consummated, Palmetto states that it will interchange traffic with both CSXT and NSR in the Cosgrove Yard. Furthermore, Palmetto states that the proposed change in operators at the Cosgrove Yard does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

Palmetto certifies that its projected annual revenues as a result of this transaction will not result in Palmetto's becoming a Class II or Class I rail carrier. Palmetto has certified that it has complied with the posting and service requirements of 49 CFR 1150.42(e), which are required when the projected annual revenue of the rail lines to be operated exceeds $5 million. In accordance with that section, the proposed transaction cannot be consummated before February 16, 2015, the effective date of the exemption.[3]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 9, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35881, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 26, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–01741 Filed 1–29–15; 8:45 am]

BILLING CODE 4915–01–P

[1] *See N. Charleston Terminal—Lease Exemption—S.C. Div. of Public Rys., Cosgrove Yard, N. Charleston, S.C.,* FD 32691 (STB served June 5, 1996).

[2] In addition, Palmetto notes that NCTC has agreed to lease to Palmetto a segment of a stub-ended side track south of the Cosgrove Yard, known as the River Track, for use as a switching lead.

[3] Pursuant to 49 CFR 1150.42(b), Palmetto states that it has provided notice of the proposed change in operators to shippers on the Cosgrove Yard trackage.

FEDERAL REGISTER

Vol. 80 Friday,
No. 20 January 30, 2015

Part II

Department of Housing and Urban Development

24 CFR Parts 91 and 93
Housing Trust Fund; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 93

[Docket No. FR–5246–I–03]

RIN 2506–AC30

Housing Trust Fund

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: The Housing and Economic Recovery Act of 2008 (HERA) establishes a Housing Trust Fund (HTF) to be administered by HUD. The purpose of the HTF is to provide grants to State governments to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families, and to increase homeownership for extremely low- and very low-income families. This rule establishes the regulations that will govern the HTF. HUD is issuing this rule as an interim rule. It is HUD's intention to open this interim rule for public comment to solicit comments once funding is available and the grantees gain experience administering the HTF program.

DATES: *Effective:* March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Marcia Sigal, Director, Program Policy Division, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7164, Washington, DC 20410; telephone number 202–708–2684 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8389.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose

This interim rule establishes the regulations that will govern HTF and the formula that will determine how HTF funds are distributed among eligible grantees. The purpose of HTF is to provide grants to State governments to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families, and to increase homeownership for extremely low- and very low-income families. HERA (Pub. L. 1110–289, approved July 30, 2008) establishes HTF and provides for it to be administered by HUD.

States and State-designated entities are eligible grantees for HTF. Annual formula grants will be made, of which at least 80 percent must be used for rental housing; up to 10 percent for homeownership; and up to 10 percent for the grantee's reasonable administrative and planning costs. HTF funds may be used for the production or preservation of affordable housing through the acquisition, new construction, reconstruction, and/or rehabilitation of nonluxury housing with suitable amenities.

Summary of Major Provisions

This rule contains both the program regulations that establish how the HTF program will be administered and the allocation formula that establishes how grant funds will be distributed to States. The formula allocation, located in subpart B of the rule, codifies language found in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) (42 U.S.C. 4502 *et seq.*), as revised by HERA (see Division A of HERA), and provides for the distribution of funds to the 50 States, the District of Columbia, Puerto Rico, and the Insular Areas. Allocation amounts are based on four need factors as well as a construction cost adjustment factor. The four need factors are found in 24 CFR 93.51(a)–(d). These need factors include: a State's relative shortage of rental housing available to extremely low-income families; a State's relative shortage of rental housing available to very low-income families; the relative number of extremely low-income renter households living in substandard, overcrowded or unaffordable units in a particular State; and the relative number of very low-income renter households living in substandard, overcrowded, or unaffordable units in a particular State. In addition, the State's local cost of construction is factored in as described in § 93.51(e).

The program regulations for HTF are found in subparts C through J of part 93 and closely mirror the regulations for the HOME Investment Partnerships program located in 24 CFR part 92. While HTF specifically targets affordable housing for very low and extremely low-income households, many of the program requirements applicable to the HOME program are similar to those for HTF. Further, each State is a participating jurisdiction in the HOME program, and all States or their designated housing entities will be HTF grantees. Consequently, many of the participation and submission requirements as well as many of the program requirements are modeled on provisions found in the regulations for HOME.

Major provisions in the HTF program regulations include: siting and neighborhood standards; income determinations; eligible costs and activities; project requirements; tenant and homeowner qualification requirements; other Federal requirements; program administration regulations; and quality control provisions. Significant changes from the proposed rule include: removal of a proposed incentive for transit-oriented development; inclusion of guidelines for a recapture provision of homeownership funds; permitting the use of HTF funds for public housing under certain Federal housing programs; and a requirement that all HTF funds be used for extremely low-income housing when HTF is less than $1 billion.

Costs and Benefits

The three primary impacts of this rule include: transfers from the government-sponsored enterprises (GSEs) and/or Treasury to States for investment in low-income housing; distribution among the States based on the formula HUD establishes for the HTF program; and the effects of HUD's program administration requirements. Of these, the largest impact is the infusion of Federal dollars into the affordable housing market.

Congress authorized HTF with the stated purpose of benefiting specific low-income populations by: (1) Increasing and preserving the supply of rental housing for extremely low-income families with incomes between 0 and 30 percent of area median income and very low-income families with incomes between 30 and 50 percent of area median income, including homeless families, and (2) increasing homeownership for very low and extremely low-income families. The formula in this rule is designed to distribute funds primarily to States with a shortage of rental housing affordable to very low and extremely low-income households. Specifically, this program provides funding to add a supply of affordable housing to markets where there is strong evidence of an inadequate supply.

The primary benefits of the HTF program are expected to be similar to the Housing Choice Voucher program. An evaluation of the impact of receiving a housing voucher versus not receiving one has shown that the primary benefit of housing assistance programs is to reduce homelessness and housing cost burdens. Thus, the primary benefit of the HTF program will be the reduction of number of homeless families and

individuals, as well as the number of families paying a disproportionate share of their income for housing in relatively tight housing markets.

HTF is a transfer to the low-income housing sector from the GSEs and/or Treasury. The size of the annual impact is equivalent to the size of the total HTF expenditures, which will vary depending on the amount of GSE business in a given year and any amounts that may be appropriated, transferred, or credited to the HTF under any other provision of law. (See 12 U.S.C. 4568.) There will be no allocation of grants under HTF if there is neither revenue from GSEs nor other funds as provided by HERA.

The formula for distributing among the States is largely determined by the statutory formula in FHEFSSA, which includes the four need factors described above, plus a construction cost adjustment factor. In addition, FHEFSSA directs that each of the 50 States and the District of Columbia are to receive a minimum allocation of $3 million. HUD's policy discretion in choosing the weights for housing needs factors has the impact of redistributing allocations among States. Different States are characterized by different measures of housing needs as well as construction costs. At a national level, however, the discretion has almost no impact because all funds are spent on low-income housing regardless of the State. The transfers are only among States, re-distributing the funds geographically.

Finally, the regulations governing program administration are not expected to have significant economic impacts. Regulations for the HOME program, which, like HTF, also provide grants for construction of low-income housing, served as the model for HTF regulations. Consequently, State grantees are already familiar with HTF's basic compliance requirements and procedures, and will not have to develop significant capacity to participate in the program. A more detailed cost-benefit analysis is provided in the regulatory impact analysis that accompanies this rule.

II. Background

HERA was major housing legislation enacted to reform and improve the regulation of the GSEs—Fannie Mae and Freddie Mac, strengthen neighborhoods hardest hit by the foreclosure crisis, enhance mortgage protection and disclosures, and maintain the availability of affordable home loans. The reform of the GSEs is provided in the Federal Housing Finance Regulatory Reform Act of 2008, which is Division A, Title I of HERA. Section 1131 of Division A amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (the Act) to add a new section 1337 entitled ''Affordable Housing Allocations'' and a new section 1338 entitled ''Housing Trust Fund.''

Section 1337 of the Act provides for the HTF (and other programs) to be funded with an affordable housing set-aside by Fannie Mae and Freddie Mac. The total set-aside amount is equal to 4.2 basis points (.042 percent) of the GSEs' new mortgage purchases, a portion of which is directed to the HTF. Under section 1337 of the Act, the Director of the Federal Housing Finance Agency (FHFA), the independent federal agency with oversight of the GSEs, has the authority to suspend Fannie Mae's and Freddie Mac's affordable housing contributions if such contributions were to have an adverse impact on the financial stability of the GSEs, as described in section 1337(b). Shortly after being placed in conservatorship in 2008, the GSEs were instructed by the FHFA to suspend the contributions.

On December 11, 2014, the Director of FHFA issued a letter to the GSEs that reinstated the GSE contributions under section 1337, in accordance with the following terms and conditions (which may be supplemented or modified by specific guidance or directive from FHFA). During each GSE fiscal year (which runs from January 1 to December 31), commencing with the GSE's fiscal year 2015 and in each fiscal year thereafter, each GSE will set aside an amount equal to 4.2 basis points of each dollar of unpaid principal balance of its total new business purchases during the fiscal year for allocation in accordance with section 1337(a) . Within 60 calendar days after the end of each fiscal year commencing with fiscal year 2015 and for each fiscal year thereafter, the GSEs will allocate to the HTF the amount set aside unless during the fiscal year the GSE has made a draw from the Department of the Treasury under the terms of the Senior Preferred Stock Purchase Agreement (SPSPA) or unless the allocation would cause the GSE to have to make a draw from the Treasury Department under the terms of the SPSPA. If the GSE has made a draw from the Department of the Treasury under the terms of the SPSPA during fiscal year 2015 or makes a draw during a subsequent fiscal year or if the allocation would cause the GSE to make a draw for that fiscal year, the GSE will make no allocation for the fiscal year for which the draw was made or for any fiscal year in which it is determined that the allocation would cause a draw, and the set aside will be reversed for that fiscal year.

The letter from FHFA also noted that although the profit levels the GSEs experienced since 2012 are not expected to be sustainable, reasonable projections indicate that the GSEs will remain profitable for the foreseeable future. FHFA continues to monitor the financial condition of the GSEs and retains the authority to revise or reverse the decision at any time in accordance with the provisions of section 1337(b). Accordingly, HUD is proceeding with this rule to implement the HTF.

Congress authorized the HTF with the stated purpose of: (1) Increasing and preserving the supply of rental housing for extremely low-income (ELI) families with incomes between 0 and 30 percent of area median income and very low-income (VLI) families with incomes between 30 and 50 percent of area median income, including homeless families, and (2) increasing homeownership for ELI and VLI families. HUD's periodic reports to Congress on worst-case needs for affordable rental housing document that shortages of affordable rental housing for ELI and VLI families have grown more severe. A household defined as experiencing worst-case housing needs means that the household has an income at or below 50 percent of the area median income, receives no housing assistance, and has a severe rent burden (paying more than half of its income for rent) and/or lives in severely inadequate conditions (*e.g.,* incomplete plumbing). As of 2011, the combined number of ELI and VLI renters with worst-case housing needs was 8.48 million, or 44 percent of all ELI and VLI renters (19.27 million). Because extremely low income households also constitute by far most (61.1 percent) very low-income renters, nearly three out of four (73.3 percent) households with worst case needs had extremely low incomes during 2011.[1]

There is a documented shortage of low-cost rental units, as builders and housing providers are unable to construct, finance, and operate a sufficient supply of rental housing affordable to ELI and VLI households. In 2011, for every 100 ELI renters, on average, there were only 36 affordable units available, and for every 100 VLI renters nationwide, only 65 rental units

[1] See HUD's Worse Case Housing Needs 2011 Report to Congress at *http://www.huduser.org/portal//Publications/pdf/HUD-506_WorstCase2011_reportv3.pdf*. See page 7.

available.[2] The HTF will provide funds to produce additional units affordable to ELI and VLI households with the greatest need, thus increasing the supply and reducing the most critical component of the existing shortage.

Housing Trust Fund—Formula Allocation

Section 1338 of the Act directs HUD to establish, through regulation, the formula for distribution of amounts made available for the HTF. The statute specifies that only certain factors are to be part of the formula, and assigns priority to certain factors. HUD's proposed formula for the allocation of HTF funds was published for public comment on December 4, 2009, at 74 FR 63938.

Housing Trust Fund—Administration of the Fund

In addition to the statutory direction to establish by regulation a formula for the allocation of HTF funds, section 1338 of the Act directs HUD to establish and manage the HTF, the purpose of which is to provide grants to States for use to: (1) Increase and preserve the supply of rental housing for ELI and VLI families, including homeless families; and (2) increase homeownership for ELI and VLI families. Section 1338 of the Act also directs HUD to establish regulations to administer the HTF, and this rule presents the regulations that will govern the HTF, on an interim basis, as provided in the Summary of this rule.

HUD's proposed rule for the administration of the HTF funds was published for public comment on October 29, 2010, at 75 FR 66978. HUD proposed to codify the HTF regulations in a new subpart N of 24 CFR part 92. Part 92 contains the regulations for HUD's HOME Investment Partnerships program (HOME program). The HOME program is the largest federal block grant program that produces affordable housing for very low-income households. The HOME program provides formula grants that communities use, often in partnership with local nonprofit groups, to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing units for rent or homeownership. The HTF will operate in substantially the same manner, by providing formula grants to States used to develop affordable housing units for rent or homeownership. In addition, the grant activities in both programs require the same grantee administration and HUD oversight functions.

[2] See HUD's Worse Case Housing Needs 2011 Report to Congress at page 9.

III. Overview of Key Changes Made in Interim Rule

This interim rule largely adopts the provisions of the proposed rule, although HUD is making some changes based on public comments and other considerations. The following highlights key changes made to the proposed rule at this interim rule stage:

- The HTF regulations will be codified in a new part 93. While the HTF regulations have been synchronized with the HOME program regulations for the reasons set forth in the preamble to the proposed rule, HUD agrees with commenters that it would be clearer to place the HTF regulations into a new 24 CFR part. Therefore, the HTF formula allocation and program administration regulations are now found in 24 CFR part 93.
- The HTF proposed rule was published prior to the publication of the HOME final rule. (The HOME final rule published on July 24, 2013, at 78 FR 44638.) In order to synchronize the applicable requirements of the HTF regulations with those of the HOME regulations, HUD has revised several provisions in the HTF proposed rule. The proposed provisions revised by this interim rule include definitions, eligible costs, eligible administrative and planning costs, property standards, inspections, income determinations, tenant protections and selections. For some of the proposed provisions revised, only minor word changes were made so that the language in the HTF regulations matches the HOME regulations, while in other sections the exact language of certain HOME regulations was incorporated in the HTF regulations.
- HUD removed the proposed regulatory sections on property standards (§§ 92.741–92.745) that require HTF units to meet Energy Star and Water Sense certifications. Since issuance of the HTF proposed rule and the HOME program final rule, HUD proposed, in a notice published in the **Federal Register** on April 15, 2014, at 79 FR 21259, to adopt revisions to the 2006 International Energy Conservation Code (IECC) and to the 2004 energy codes of the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), and apply these revised standards to the HUD programs covered by the Energy Independence and Security Act of 2007 (EISA). The covered HUD programs include the HOME program, and HUD also applies these standards to HTF to synchronize with the standards to be applied to the HOME program.
- At the proposed rule stage, HUD proposed to facilitate the use of HTF funds in transit-oriented development by proposing a different definition of commitment of HTF funds for transit-oriented development projects. HUD removes this definition in this interim rule and instead grantees will determine how best to use HTF funds in transit-oriented development projects within the requirements for commitment and allocation plans established in this rule.
- HUD adds a process by which minimum grant awards will be determined if the amount of funds in the HTF, in any given fiscal year, is insufficient to award each grantee a minimum grant of $3 million.
- The HTF regulations regarding operating cost assistance and operating cost reserves have been modified. In response to public comment to allow more flexibility for grantees to provide operating cost assistance, the limit on the amount of operating cost assistance and operating cost reserves that a grantee may award from its annual grant was increased from 20 percent to one third. In addition, the requirements for operating cost reserves will differ depending on the source of funds for the HTF. For non-appropriated funds (*i.e.,* the allocations from Fannie Mae and Freddie Mac) that become available for the HTF formula distribution, grantees will be allowed to fund operating cost reserves at the amount required for a period of up to 30 years (the term for the period of affordability for each HTF-assisted project). However, if appropriated funds become available for HTF, grantees will be allowed to fund operating cost reserve for a period of no more than five years, as provided in the proposed rule and retained in this interim rule. At the proposed rule stage, HUD did not propose to allow use of HTF funds for public housing. This interim rule allows the use of HTF funds (1) in connection with the Choice Neighborhoods (Choice), and low-income housing tax credit (LIHTC) programs for construction of new units that replace existing public housing properties; and (2) for the rehabilitation of existing public housing units in connection with the Rental Assistance Demonstration, Choice and LIHTC programs.

IV. Discussion of Public Comments and HUD Responses

The public comment period for the proposed formula rule closed on February 2, 2010. HUD received 13 public comments on the proposed formula rule. Commenters included

local housing and community development agencies, housing groups, housing authorities, trade associations, and individuals. A majority (eight) of the commenters wrote in support of the rule or portions of it, including a national advocacy organization that fully endorses the proposed rule. HUD is not addressing these favorable comments because they do not raise issues which require a response. Other comments are discussed below. The public comments on the proposed formula rule can be found at: *http://www.regulations.gov/#!docketDetail;D=HUD-2009-0149.*

The public comment period for the proposed program rule closed on December 28, 2010. HUD received 93 comment letters; commenters included State and local housing and community development agencies, housing groups, housing authorities, trade associations, and individuals. The comment letters included general comments about the proposed rule and statutory requirements for the HTF, as well as suggestions for changes to specific provisions in the proposed rule. The public comments on the proposed program rule can be found at: *http://www.regulations.gov/#!docketDetail;D=HUD-2010-0101.*

Issues raised in public comments on the proposed formula and proposed program rule and HUD's responses to these comments follow.

Part 91—Consolidated Submissions for Community Planning and Development Programs (Consolidated Plan Revisions)

The proposed program rule proposed to make conforming changes to the Consolidated Plan regulations at 24 CFR part 91 to require information related to the HTF to be included in State or local government strategic and annual action plans. As stated at § 91.220 and § 91.320, HUD proposed to require that the action plan must include the HTF allocation plan.

Comments: HUD received several comments which suggested additional required elements be added to the allocation plan, including: National standards for green, healthy, sustainable development will be met by HTF units; caps on operating assistance; transit-oriented development projects; an explanation of the State's decision to use subgrantees, criteria for selecting subgrantees, and a method for distributing funds among subgrantees. One commenter suggested that HUD require the allocation plans for HTF funds to specifically prioritize transit-oriented development. One commenter suggested specific revisions to the language for the sake of further clarity, such as cross references between the definition of HTF funds at § 92.702 in § 92.220(l)(4)(i) and § 92.320(k)(5)(I). A commenter suggested that HUD require, at § 92.725(c), that the subgrantee's HTF allocation plan be consistent with the State's HTF allocation plan.

Similarly, a commenter suggested that HUD revise § 92.220(l)(4)(i) and § 92.320(k)(5)(i) so that they have identical language and requirements. One commenter suggested that the housing market characteristics in the HTF formula be added to the general housing market characteristics required in the consolidated plan at § 92.210(a) and § 92.310(a). Another commenter recommended that the rule require HTF allocation plans to certify that the HTF funds will not be subject to State or local laws and policies that impose requirements for subsidized housing development that exceed the requirements for similar residential development not involving subsidies. Two commenters stated that the proposed rule should not restrict the types or locations of HTF units, but instead should retain maximum flexibility to meet local needs.

HUD Response: HUD appreciates the concern expressed by commenters that HTF allocation plans at the State and local level mirror each other so that the HTF funds expended are targeted to the needs identified in the state plans. However, it is possible that a State or State-designated entity would provide HTF funds to different subgrantees for different types of projects and programs throughout the state to address various needs. In these situations, having identical State and local plans would not be practicable. To address these concerns, rather than modifying part 91 requirements related to HTF allocation plan, at this interim rule stage, HUD modified language at § 93.404 (§ 92.774 of the proposed rule) to require that grantees include executed written agreements with subgrantees that specify allowable programs and requirements.

An explanation of the State's decision to use subgrantees, criteria for selecting subgrantees, and method for distributing funds among subgrantees are required at § 91.320(k)(5). The housing market characteristics used in the HTF formula are reflected in the analyses required in the consolidated plan. In response to comments about the locations where HTF funds will be used, HUD notes that the HTF statute does not preempt State or local law, and the regulation cannot prevent the use of HTF funds in places that impose requirements on subsidized projects that are not in violation of Federal laws.

General Comments on Promulgation of the HTF Regulations as Subpart N of Part 92 of the Proposed Rule

HUD specifically solicited input from HTF grantees and interested parties on HUD's proposed coordination of the HOME program and HTF regulations, as well as additional or alternative ways to better coordinate and use HTF funds with funding from other Federal, State, local programs, or private sources typically used to produce mixed-income affordable housing developments.

Comments: Some commenters expressed concern that by including HTF regulations in Subpart N of the HOME program regulation, the HTF program will lack an identity as a separate program.

HUD Response: HUD agrees with commenters that the regulations should be located in a new part 93, as this approach highlights HTF as a separate program, and this rule codifies the regulations in new part 93. However, many of the requirements are the same for both the HOME and HTF programs (*e.g.,* administrative requirements; monitoring, site and neighborhood standards; and affirmative marketing), therefore, in moving the HTF regulations as proposed in part 92 for the HTF to part 93, HUD repeated the requirements in the HOME rule that also apply to the HTF.

Several commenters also called for streamlining between HTF and other programs and asked that HUD avoid duplicative requirements. Because many HTF grantees also administer the HOME program, streamlining the regulations this way will help grantees avoid having to create entirely new or separate structures to administer HTF funds, and this may help grantees develop and deliver more affordable housing sooner to households and communities in need.

In addressing public comments on specific provisions in the proposed rule, this preamble will refer to the regulatory sections as they were originally proposed in part 92. The following table matches the proposed rule sections with the new sections in this interim rule:

Proposed	Final	Subject
	Subpart A—General	
92.701	93.1	Overview.
92.702	93.2	Definitions.
92.703	93.3	Waivers.
	Subpart B—Allocation Formula; Reallocations	
92.710	93.50	Formula Allocation.
92.711	93.51	Formula Factors.
92.712	93.52	Minimum State Allocations.
92.713	93.53	Federal Register Notice of Formula Allocations.
92.714	93.54	Reallocations by Formula.
	Subpart C—Participation and Submission Requirements; Distribution of Assistance	
92.720	93.100	Participation and Submission Requirements.
92.725	93.101	Distribution of Assistance.
	Subpart D—Program Requirements	
92.726	93.150	Site and Neighborhood Standards.
92.727	93.151	Distribution of Assistance.
	Subpart E—Eligible and Prohibited Activities	
92.730	93.200	Eligible Activities: General.
92.731	93.201	Eligible Project Costs.
92.732	93.202	Eligible Administrative and Planning Costs.
92.734	93.203	HTF Funds and Public Housing.
92.735	93.205	Prohibited Activities and Fees.
	Subpart F—Income Targeting	
92.736	93.250	Income Targeting: Rental Units.
92.737	93.251	Income Targeting: Homeownership.
	Subpart G—Project Requirements	
92.740	93.300	Maximum Per-Unit Subsidy Amount, Underwriting, and Subsidy Layering.
92.741	93.301	Property Standards.
92.746	93.302	Qualification as Affordable Housing: Rental housing.
92.747	93.303	Tenant Protections and Selection.
92.748	93.304	Qualification as Affordable Housing: Homeownership.
92.749	93.305	Qualification as Affordable Housing: Modest Housing Requirements for Homeownership.
92.750.		
	Subpart H—Other Federal Requirements	
92.760	93.350	Other Federal Requirements and Nondiscrimination; Affirmative Marketing.
92.761	93.351	Lead-Based Paint.
92.762	93.352	Displacement, Relocation, and Acquisition.
92.763	93.353	Conflict of Interest.
92.764	93.354	Funding Accountability and Transparency Act.
	Subpart I—Program Administration	
92.770	93.400	Housing Trust Fund (HTF) Accounts.
92.771	93.401	HTF Grant Agreement.
92.772	93.402	Program Disbursement and Information System.
92.773	93.403	Program Income and Repayments.
92.774	93.404	Grantee Responsibilities; Written Agreements; Onsite Inspections; Financial Oversight.
92.775	93.405	Applicability of Uniform Administrative Requirements.
92.776	93.406	Audit.
92.777		Closeout.
92.778	93.408	Recordkeeping.
92.779		Performance reports.
	Subpart J—Performance Review and Sanctions	
92.780	93.450	Accountability of Recipients.
92.781	93.451	Performance Reviews.
92.782	93.452	Corrective and Remedial Actions.

Proposed	Final	Subject
92.783	93.453	Notice and Opportunity for Hearing; Sanctions.

Definitions Proposed § 92.702; Final § 93.2

In § 92.702(a), HUD proposed that several definitions in the HOME program regulations (24 CFR 92.2) be applicable to the HTF. In § 92.702(b), HUD outlined key definitions applicable to the HTF, including: ''Commitment,'' several definitions related to energy efficiency, ''Grantee,'' ''Recipient,'' ''State,'' ''State-Designated Entity,'' and ''Subgrantee.'' HUD received several comments regarding the language proposed to define terms applicable to the HTF.

Commitment

To facilitate transit-oriented development projects, the proposed definition of ''commitment'' permitted a unit of general local government to acquire the land for a transit-oriented development project in advance of having specific project plans. Specifically, HUD proposed that the unit of general local government must hold title to the land for the transit-oriented development project; the proposed rule allowed 36 months from the date of acquisition of the property for a transit-oriented development project to commit additional funds to a specific project on the property.

Comments: HUD received several comments regarding this proposed definition of and deadline for ''commitment'' for transit-oriented development projects. Some commenters suggested the deadline to commit additional funds to transit-oriented development should be extended to 42 months, while others suggested 48 months, and one commenter suggested 60 months. Another commenter suggested that the commitment deadline for transit-oriented development should be less than 36 months.

Some commenters stated that the proposed definition of ''commitment'' for transit-oriented development should be revised to allow non-local government entities to commit the few funds necessary to comply with the rule and two commenters suggested that these non-local government entities be allowed to hold title to the transit-oriented development property. A few commenters stated that the rule's emphasis on transit-oriented development gives preference to urban areas, and asked that the rule provide a framework for balancing transit-oriented development goals with rural areas that have limited or no transit services. Commenters asked HUD to instruct States to give the same priority to developments meeting the greatest rural needs as is given to transit-oriented development in urban areas. Some commenters stated that the rule should not mandate that all projects be located in a sustainable community since some States do not have fully developed transit systems, and the rule should provide flexibility to meet the varying needs of States.

Another commenter suggested that the rule should require a minimum percentage of HTF funds be expended for transit-oriented development and mixed-income housing development. A few commenters supported allowing HTF funds to be used in combination with other government programs to leverage sources for creating a transit-oriented development land acquisition or land bank program. A commenter proposed a more detailed definition for transit-oriented development that is intended to better target developments that promote transit ridership and reduce motor vehicle trips, remove the requirements for mixed-use and mixed-income development, require that developments within transit-oriented development be along a walkable route, and clarify what constitutes a ''transit facility.'' A few commenters suggested various methods to incentivize development of housing for ELI families in transit-oriented development projects that are accessible to transit and employment centers.

Several commenters expressed concern over potential abuses of the different commitment deadlines and asked HUD to include additional requirements in the final rule to ensure that grantees do not tie up funds, *e.g.,* to prevent local governments from using HTF funds to serially purchase land and hold it as if ''land banking.'' Some commenters stated that the rule should require that if the original land purchased is not used for ELI households, then the recipient must place the planned ELI housing within the same transit-oriented development area. A few commenters stated that the rule should also require that the correct zoning be in place before property is purchased for transit-oriented development, and one commenter suggested that the final rule include specific parameters for when property acquisition for transit-oriented development would be permissible. Finally, one commenter requested that the definition of ''commitment'' include a mechanism to ensure project completion, such as deadlines, progress schedules, or a recapture mechanism.

HUD Response: HUD appreciates the comments regarding how HUD may provide incentives to encourage the use of HTF funds to develop housing affordable to ELI households that is also accessible to transit and employment centers. However, HUD acknowledges and agrees with the concerns expressed by many commenters that a separate commitment deadline for HTF funds used in transit-oriented development may cause a decrease in the amount of HTF units produced.

Transit-oriented development is not required in the HTF statute or regulations. As proposed, § 92.725 stated that grantees are responsible for distributing HTF funds throughout the State according to the State's assessment of the priority housing needs within the State, as identified in the HTF allocation plan, which is part of the State's consolidated and annual action plan. These plans contain several analyses of priority housing needs. Based on these identified priority needs, grantees may choose to prioritize development of HTF-assisted units near transit access and sustainable development.

HUD agrees with commenters that the separate definition of commitment for transit-oriented development could lead to ''land banking.'' Land acquisition for banking purposes is not an eligible activity in the HTF statute, and HUD does not seek to encourage the use of HTF funds for ''land banking.'' Based on the comments received, HUD decided that use of HTF funds in transit-oriented development projects is best addressed at the State and local level, and that it is not necessary at this time to establish a separate definition or deadline related to the use of HTF funds for transit-oriented development projects. Each grantee may include incentives and priorities in its HTF allocation plan to further promote sustainable development that is appropriate to the local communities where housing developed with HTF funds will be located.

This rule, at § 93.2, eliminates the separate definition of commitment for transit-oriented development.

State-Designated Entity, Grantee, Recipient

In the proposed rule, a State-designated entity was defined as a State housing finance agency, tribally designated housing entity, or any other qualified instrumentality of the State that is designated by the State to be the grantee.

Comments: One commenter recommended that the definition of ''State-designated entity'' be revised to include ''housing community development entity.'' A commenter stated that the definitions of ''grantee'' and ''recipient'' should be consistent between HOME and HTF. Other commenters suggested that the rule be revised to explicitly state that public agencies, local governments, public housing authorities, non-profit entities, and for-profit entities are eligible recipients.

HUD Response: The terms ''state-designated entity'' and ''recipient'' are defined in the statute. This rule includes examples of the types of entities, such as public housing agencies, that may be eligible recipients providing that they meet the statutory qualifications for a recipient.

Extremely Low- and Very Low-Income Families

The HTF statute contains definitions of extremely low and very low-income families based on percent of median income, with adjustments for family size (30 percent of area median income (AMI) for extremely low and 50 percent of AMI for very low income).

Comments: Some commenters stated that the proposed definitions of ''very low-income families'' and ''extremely low-income families'' are inconsistent with the statute. A few commenters requested HUD provide a definition of ''rural area'' in the definition of ''very low-income families.'' Other commenters suggested that the HTF should adopt the definition of ''family'' as used in the HOME program. A commenter requested the term ''household'' replace ''family'' throughout the rule.

HUD Response: While the terms ''family'' and ''household'' do not have the same meaning (a ''household'' can comprised more than one family), HUD acknowledges that the terms are sometimes used interchangeably in statute, regulation and guidance (*i.e.,* HOME uses the part 5 definition of ''family'' at 24 CFR 5.403, and defines household as one or more persons residing in a unit).

HUD agrees with commenters that the HTF statute does not allow for the same adjustments in income as in the HOME program and modified the regulatory language at § 93.2 (from § 92.702 of the proposed rule) to reflect only the adjustments allowed by the HTF statute.

For the purposes of the definition of very low-income families, in this interim rule, HUD defines the term ''rural'' based on the term ''metropolitan'' as defined by the Office of Management and Budget. All ''non-metropolitan '' areas will be considered ''rural.''

Allocation Formula Proposed § 93; Final § 93, Subpart B

Comments: A commenter states that the need factors should be weighted equally to ensure fair distribution of resources. Another commenter specifically supports the 50 percent weight assigned to factor 1 (shortage of units), and the 25 percent weight assigned to factor 3. A commenter states, in the absence of information about how much of an increase California would receive compared to the proposed allocation, and the substantial housing needs of California's low and very low-income population, that the factors should be weighted in accordance with alternative three, under which the first factor would be weighted at 60 percent and the other factors weighted at 13.3 percent. Another commenter states that the extremely low-income focus of this program means that it should be a key resource for assisting the homeless, and the formula allocation should reflect that priority.

HUD Response: Section 1338(c)(3)(C) of the Act requires the formula to give priority emphasis and consideration to the first factor in section 1338(c)(3)(B)(i), and therefore the factors cannot be weighed equally. The proposed rule reflected this priority consideration by weighting this factor higher than the other factors in the proposed allocation formula. The interim rule is adopting the proposal that the two factors addressing the needs of extremely low-income households, Factors 1 and 3, have a combined weight of 75 percent in keeping with the statutory targeting of funds.

The Regulatory Impact Analysis (RIA) for the formula allocation HTF proposed rule was issued on December 4, 2009, and can be found on HUD's Web site (*http://www.huduser.org/portal/publications/pubasst/riaforhtf.html*). The RIA describes in detail the alternative weight structures that HUD analyzed in developing the HTF allocation formula, the resulting impacts of each alternative on the States, and the analysis that supports HUD's selection of the alternative in the proposed allocation formula. The proposed formula strikes a balance between the high levels of housing needs in California and other States, as well as the competing priorities discussed in the RIA.

An extremely low-income household, by statutory definition, means a household whose income does not exceed 30 percent of the area median income, with adjustments for family size. Homeless individuals and families who qualify as extremely low-income will be eligible for HTF units. The combined weight of 75 percent for the two factors that address the needs of extremely low-income households, factors one and three, reflects the statutory targeting of funds to extremely low-income households in the proposed formula. Furthermore, section 1338(a)(1)(A) of the Act specifically states that the purpose of the HTF is ''to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families . . .''

Data Used in the Allocation Formula

Comments: A commenter states that homeless households should be included in the aggregate number of extremely low-income renter households to determine the true need. Data are readily available from Continuum of Care (CoC) programs and the Homeless Management Information System (HMIS). Another commenter states that more detail is needed on the sources of data the proposed formula uses. A commenter states that HUD should state exactly which American Community Survey data it will use, whether such data will be updated and used every year, and at what point 2010 Census data will be used. The commenter also states that HUD should clarify which RSMeans Cost Survey data will be used, and recommends data specific to multifamily construction. This commenter states that HUD should advise what sampling method will be used. Whatever method is used, the commenter stated that HUD should recognize that most multifamily construction is in the higher-cost areas.

HUD Response: The proposed allocation formula incorporated the required statutory factors in section 1338(c)(3)(B). Consistent with the Community Development Block Grant (CDBG) and HOME formulas, the data source used to determine the number of extremely low-income renters with housing problems for factor three will be the most currently available data

from the United States Census Bureau.[3] For HTF allocations in Fiscal Year (FY) 2016, the most current data will be a special tabulation of the latest available three-year average data from the American Community Survey.[4] Census standard tabulation data do not provide counts of households by the income breaks required by statute so HUD must request a special tabulation of American Community Survey data to calculate the HTF formula. HUD is using the three-year average data to avoid problems with year-to-year bias in the data caused by small samples in some of the smaller population states. These data do not include homeless individuals and families.

HUD appreciates the commenter's view that homeless families should be included in the count of extremely low-income families. HUD has considered the idea of including CoC counts or (HMIS) counts of homeless people in the counts for extremely low-income. HUD has decided not to implement these suggestions for two reasons:

• Inconsistent and incomplete data. Neither CoC nor HMIS data are complete for all parts of the country and the method of data collection is somewhat different from place to place. That makes the data poorly suited for an allocation formula because they do not have full national coverage and different data collection methods may result in bias toward one place over another.

• Incentive bias. Even when the data have full coverage, HUD is unlikely to use CoC or HMIS data for any allocation formulas because the data are being reported by grantees. HUD is concerned that some grantees may adjust their method of reporting if they perceive they might get a different funding allocation based on that reporting.

The RSMeans construction cost data used in the formula are the RSMeans Square Foot Costs. Specifically, HUD used city-level location factors for residential construction to prepare state-level estimates of the relative cost of residential construction. In developing these State estimates, HUD did not select a subset or sample of cities. Rather, every city with a published location factor was included, and location factors were weighted in proportion to city populations. Data are not available for rural areas or for multifamily residential construction specifically. However, because construction costs are generally higher in population centers, HUD believes that the methodology adequately accommodates the commenter's concern about multifamily construction in costly areas. High-cost areas are reflected in the use of urban data to prepare State estimates as well as by the use of population weighting to ensure that the most populated cities receive their due priority. HUD intends to use the most recent available cost data and population data in developing future estimates.

Minimum Allocations

The interim rule contains a new provision to address minimum grant allocations. As noted earlier in this preamble, section 1338(c)(4)(C) of the Act directs that each of the 50 States and the District of Columbia is to receive a minimum grant of $3 million. This section of the statute further provides that if the formula amount determined in any fiscal year would result in an allocation of a minimum grant of less than $3 million to any of the 50 States or the District of Columbia, the allocation for any such State or the District of Columbia shall be allocated a minimum grant of $3 million, and the increase shall be deducted pro rata from the allocations made to all the other States.

The Act did not envision a situation in which the HTF lacked sufficient funds to award each of the 50 States and the District of Columbia a minimum grant of $3 million. After the deposits are made to the HTF for a fiscal year, section 1338(c)(4)(B) of the Act requires HUD to make allocations to its grantees. To give meaning to both of these statutory sections, HUD interprets the statute to require the allocation of grants even if the grants are less than the $3 million minimum. If the amount for a fiscal year is insufficient to provide the minimum allocations, HUD will publish a notice in the **Federal Register** for comment, describing an alternative allocation method.

Participation and Submission Requirements; Distribution of Assistance Proposed §§ 92.720–92.725; Final §§ 93.100–101

Allocation Plan/Participation and Submission Requirements § 92.720

In § 92.720, HUD proposed requiring each State to notify HUD of its intent to participate in the HTF program and to have a consolidated plan that contains its HTF allocation plan required by the Act. HUD proposed to implement the requirement for an HTF allocation plan by amending its regulations in 24 CFR 91.220 and 91.320 to include these requirements in the consolidated plans of grantees and, where applicable, subgrantees. Section 92.720 of the proposed rule directed States to include the HTF allocation plan in the consolidated plan and follow the citizen participation requirements found in the consolidated plan regulations in 24 CFR part 91.

Comments: Several commenters expressed concern that the proposed requirements do not place enough emphasis on public participation and transparency.

HUD Response: HUD recognizes the commenters' concerns but believes the requirements adopted in this rule provide for sufficient public input on the allocation of HTF funds without the need for additional or new citizen participation requirements. Section 92.720(b) of the proposed rule directed States to include the HTF allocation plan in the consolidated plan and follow the citizen participation requirements in the consolidated plan regulations in 24 CFR part 91. The HTF allocation plan must consider the merits of the application in meeting the priority housing needs of the State. The rule provides flexibility to allow each grantee to include incentives and priorities in its HTF allocation plan that are appropriate to the communities where housing developed with HTF funds will be located.

The language is adopted in this rule as proposed.

Distribution of Assistance: HTF Grantees, Subgrantees, and Recipients § 92.725

HUD proposed that a formula grant be provided to each State for each year that funds are made available for the HTF. In § 92.725, HUD described the proposed ways HTF funds will flow to the communities and recipients, as well as the participation and submission requirements for grantees receiving an HTF allocation.

Comments: Some commenters suggested that HTF funds should be allocated directly to municipalities and local participating jurisdictions, as is done with other Community Planning and Development programs (*e.g.,* HOME, CDBG, Emergency Solutions Grants) because States may be unsuited to determine local housing priorities and unable to effectively administer the HTF. In addition, they stated that passing the funding through the State delays the use of funds at the local level, and local governments are more in tune with local needs.

Several commenters stated that HUD's rule should ensure adequate allocation to rural areas, and that allocations should be made based on the relative or proportional need of frontier, rural, and

[3] See *http://www.census.gov/housing/.*

[4] See *http://www.census.gov/acs/www/data_documentation/data_main/.*

urban areas. A few commenters suggested that the final rule should require funding to be allocated by formula to areas of greatest need, and adjusted for high-cost living areas and the lack of affordable housing.

HUD Response: States and State-designated entities are the only permissible grantees in the HTF statute. HUD does not have the authority to designate local governments as grantees. An HTF grantee may choose to distribute HTF funds through one or more subgrantees. A subgrantee may be a State public agency or a unit of general local government. Section 91.320(k)(5) requires the action plan to reflect the State's decision to distribute HTF funds through grants to subgrantees, and § 92.725(d) requires the grantee to ensure that its subgrantees comply with the HTF requirements and carry out the responsibilities of the grantee. The HTF allocation formula is statutorily prescribed and HUD does not have the authority to change the allocation method. However, as described in § 92.725(b), each grantee is responsible for distributing HTF funds throughout the State according to the State's assessment of the priority housing needs within the State, as identified in the State's approved consolidated plan (which will include the HTF allocation plan). The HTF allocation plan must describe the distribution of the grant and priority housing needs, including rural housing needs.

The language is adopted in this rule as proposed.

Program Requirements Proposed §§ 92.726–92.727; Final §§ 93.150

Site and Neighborhood Standards § 92.726

In § 92.726, HUD proposed that the site and neighborhood standards contained in the HOME program regulations at § 92.202 apply to the HTF.

Comments: A commenter suggested that HUD adopt all the site and neighborhood standard criteria applicable to existing housing being considered for project-based vouchers rather than limiting the criteria to new construction projects. The commenter reasoned that HTF, unlike HOME, will fund rehabilitation projects. Another commenter suggested that HUD's rule include a provision that requires site selection to occur in a manner that will not exclude people with disabilities. A commenter stated that the rule should allow HTF funds to be held when local opposition has delayed a project or when exclusionary zoning is being challenged.

HUD Response: HUD is adopting the site and neighborhood standards from § 92.202 of the proposed rule in new § 93.150, with an updated cross-reference to the applicable standard for new construction projects at 24 CFR 983.57(e). As with the HOME program, HUD is not applying site and neighborhood standards to rehabilitation projects under HTF. However, if project-based vouchers are used in an HTF rehabilitation unit, the site and neighborhood standards for project-based vouchers will apply. In addition, the requirements of 24 CFR part 8 (which implement section 504 of the Rehabilitation Act of 1973) apply to the HTF, and specifically address the site selection with respect to accessibility for persons with disabilities.

Income Determinations § 92.727

In § 92.727, HUD proposed a definition for ''annual income'' and described the process for determining the annual income of tenants and homebuyers for eligibility in HTF-assisted housing.

Comments: A commenter requested the proposed language be revised to further clarify which set of income determination provisions are applicable to the HTF. Another commenter recommended that HUD's rule allow residents and applicants to contest income determinations. Another commenter expressed concern that the use of the Enterprise Income Verification can pose a problem for recently institutionalized persons, as it can cause significant delays.

HUD Response: HUD appreciates the suggestions but the income determination provisions provided in this HTF rule are those that HUD uses in its HOME program rule, which HUD believes work well. Therefore HUD is not inclined to change these provisions. The income determinations will be made in accordance with the HTF program requirements, which mirror the HOME program requirements, and do not involve the use of the Enterprise Income Verification system.

Eligible and Prohibited Activities Proposed §§ 92.730–92.735; Final §§ 93.200–93.205

In §§ 92.730–92.735, HUD proposed requirements that govern eligible and prohibited activities, eligible project costs, and planning and administrative costs. Allowable and prohibited fees were also addressed in these sections.

Eligible Activities § 92.730

In § 92.730, HUD set forth HTF-eligible activities. Section 1338(c)(7)(A) of the Act provides that HTF funds may be used for assistance for the production, preservation, rehabilitation, and operating costs of rental housing. To achieve the goal of using HTF funds primarily for the production of new affordable units, HUD proposed to limit the amount of HTF funds that may be used for operating cost assistance to 20 percent of each annual grant.

Section 1338(c)(7)(B) provides that the production, preservation, and rehabilitation of housing for homeownership, including forms of down payment assistance, closing cost assistance, and assistance for interest rate buy-downs, are eligible activities. HTF funds may be used only for units that will be the principal residence of eligible families who are first-time homebuyers.

Section 1338(c)(10)(A) of the Act provides that not more than 10 percent of the annual grant may be used for homeownership activities. If a grantee chooses to implement a homeownership program with HTF funds, HUD proposed requiring grantees to perform underwriting analysis.

Eligible Activities: General § 92.730(a)

Comments: HUD received several comments which suggested the rule expand the list of eligible activities. A commenter stated that HUD's rule should allow for HTF funds to be used in projects already underway. Another commenter suggested HUD add explicit language clarifying that HTF funding may be used in mixed-income developments. A few commenters suggested that HUD's rule permit HTF funds to be used for development costs associated with laundry facilities and community space located in buildings which are separate from residential space. A commenter requested additional clarification regarding the prohibition on charging laundry access fees does not impact the ability to impose reasonable charges for the use of a washer or dryer. Another commenter recommended that HUD's rule include language that provides a basis for charging impact fees, and clarifies ''reasonable and necessary costs.'' A commenter asked for a definition of ''non-luxury,'' and stated that this requirement, as it applies to construction costs, is impractical to apply. Another commenter suggested that HUD allow grantees to charge property owners monitoring costs for the entire period of affordability up front and include monitoring costs as an eligible use of HTF funds. A commenter recommended that refinancing costs be included as an eligible cost.

Several commenters objected to allowing transitional housing as an eligible activity because it does not meet the intent of increasing access to rental properties available to ELI households and does not appear in the authorizing statute. Another commenter expressed concern that there may be conflicts between fair housing laws and transitional housing plans impacting people with disabilities.

Another commenter stated that there should be a greater focus on homeownership in the final rule, and that downpayment assistance programs should constitute an eligible use of HTF funds. A few commenters opposed the first-time homebuyer restriction and recommend the final rule permit the rehabilitation of ELI owner-occupied homes as a more effective means of addressing homeownership for ELI households. Other commenters recommended HUD's rule stress the voluntary nature of using 10 percent of HTF funds for homeownership activities.

HUD Response: This rule makes clear that projects underway when the HTF rule is implemented are not eligible to receive HTF funds. HUD does not agree that HTF funds should be permitted to pay costs for constructing community space or laundry facilities in buildings that are separate from the residential space. Although it is sometimes necessary to provide such space in separate buildings, HUD believes that States should leverage other funds to pay such costs so that HTF funds are used to create as many ELI and VLI units as possible. Nothing in this interim rule prohibits reasonable charges for washing machines.

HUD does not believe that inclusion of a definition of non-luxury in the HTF rule is practical, as amenities considered luxury change over time. For example, air conditioning in certain HUD-assisted housing was considered a luxury item at one time. HTF grantees have experience with ensuring that only non-luxury items are included in housing because they also administer the HOME program, which has similar requirements.

HUD has reconsidered making transitional housing an eligible type of housing in the HTF and agrees with commenters that this type of housing is contrary to the primary purpose of the HTF, which is to increase the supply of permanent affordable housing. Transitional housing is frequently developed to address the needs of homeless persons, to provide housing assistance and services that will enable them to obtain permanent affordable housing. The language in this section was revised to delete transitional housing as an eligible type of housing.

Monitoring is an eligible administrative cost. This interim rule does not allow grantees to charge property owners monitoring costs for the entire period of affordability ''up front'' as suggested by commenters but does permit HTF grantees to charge property owners monitoring fees (see § 93.205).

Rehabilitation of housing for existing homeowners is not an eligible activity in the statute. The statute restricts the use of HTF funds for homeownership to first-time homebuyers and limits the amount of each annual HTF grant that may be used for homeownership to 10 percent. Each State is allowed by the statute to determine how it will use HTF funds for homeownership assistance. Downpayment assistance is an eligible activity in the regulation.

The proposed rule made refinancing of existing rental projects permissible as part of rehabilitation when the proportional cost of rehabilitation is greater than the amount of debt refinanced. HUD proposed these restrictions on refinancing in order to synchronize with the HOME program and to facilitate the preservation and rehabilitation of existing housing for ELI and VLI households. These proposed restrictions are therefore retained in this interim rule.

Eligible Project Costs § 92.731

In § 92.731, HUD proposed eligible project costs to include development hard costs, refinancing costs in conjunction with rehabilitation, acquisition of standard projects, development-related soft costs, architectural and engineering fees, project audit costs, staff overhead related to the development of the units, settlement costs, impact fees, the cost to address and meet environmental and historic preservation property standards, operating costs, relocation costs, repayment of construction or other loans, and certain types of costs for construction undertaken before HTF funds were committed to the project.

Operating Cost Assistance and Operating Cost Assistance Reserves (§ 92.731(e))

To achieve the goal of using HTF funds primarily for the production of new affordable units, HUD proposed, in § 92.730(a)(1), to limit the amount of HTF funds that may be used for operating cost assistance to 20 percent of each annual grant. The proposed rule stated that operating cost assistance can be provided for the entire period of affordability, but may be awarded only in two-year increments from each HTF grant. Operating cost assistance, as defined in § 92.731(e), may include the cost of utilities, insurance, taxes, and scheduled payments to a replacement reserve. The eligible amount of HTF funds per unit for operating costs is determined based on the deficit remaining after the tenant monthly rent payment for the HTF-assisted unit is applied to the HTF-assisted unit's share of monthly operating costs. The written agreement between the grantee and the recipient must set forth the maximum amount of the operating assistance to be provided to the HTF-assisted rental project.

The proposed rule also included operating cost reserves of up to five years worth of operating cost assistance as an eligible activity (§ 92.731(e)(2)). Grantees would be allowed to establish operating cost reserves for specific HTF-assisted projects if necessary to ensure the financial feasibility of a project.

Comments: Several commenters disagreed with the proposed 20 percent cap on the amount of each annual grant that may be used for operating cost assistance and suggested that HUD eliminate any restriction on the amount of each annual grant that may be used for operating cost assistance. Others suggested increasing the cap. Still others recommended that any limits on operating cost assistance should be based on each State's housing needs and should be left to the discretion of the States. Commenters also recommended that HUD impose no restriction on using HTF funds for operating assistance in the absence of Section 8 voucher assistance. Some commenters stated that HTF funding for operating assistance should be limited to HTF-assisted units and units being developed with HTF funds, while others support allowing HTF operating assistance for units funded by other State and Federal programs.

A commenter stated that it will be difficult to attract investors and ensure the long-term financial success of projects without giving States flexibility in determining how to apply HTF funds toward operating assistance. Another commenter stated that the program will encounter underwriting challenges regardless of operating assistance, but depending on the mix of units, there may be sufficient revenue generated to support the properties. Commenters expressed concern that the proposed cap will limit the number of units that can be developed with HTF funds, particularly units that serve ELI households.

A commenter stated that the rule must clarify that States are permitted to limit

and target operating assistance. Commenters recommended that the final rule should permit the initial HTF grant to include sufficient funding for operating assistance or operating reserves to last for the entire term of affordability. A few commenters stated that the final rule should permit the creation of capital reserves aimed at increasing affordability for ELI households.

In response to a request from HUD for input on whether tax abatements can significantly reduce operating costs, one commenter stated that while tax abatements can reduce operating cost, local governments will hesitate to provide tax abatements due to current economic pressures.

A few commenters stated that the time limits for offering operating cost assistance and operating reserves should be eliminated at the final rule stage. Commenters stated that HTF-assisted units that require operating assistance during the first two years will almost certainly need operating assistance throughout the entire term of affordability, and that grantees should have the flexibility to provide more than two years of assistance when faced with underwriting or feasibility concerns. Another commenter stated that the HTF funding should be allowed to capitalize Section 8 transition reserves to encourage private lenders to underwrite HTF-assisted projects with Section 8 project-based assistance. A few commenters recommended that HUD provide guidance in the HTF program guidelines to State grantees on underwriting standards for reinvestment and building reserves to self-finance rehabilitation during the period of affordability.

Lastly, several comments were submitted regarding the use of Section 8 vouchers in conjunction with HTF funds. Some commenters recommended that Section 8 vouchers be awarded along with the HTF funding. Another commenter asks whether there is a unit-based or project-based prohibition on using HTF funds for operating costs when Section 8 project-based vouchers are also involved in the project.

HUD Response: The HTF is primarily a production program meant to add units to the supply of affordable housing for ELI and VLI households. Analyses of the use of HTF funds for both development and operating cost assistance showed that the use of HTF funds for operating assistance could very quickly consume each State's annual grant. This would deter the use of HTF funds for production of additional units, as well as preservation and rehabilitation of units, targeted to ELI households—the primary purpose of the HTF. HUD also assumes that HTF funds will be combined with other sources to produce and preserve affordable units, mostly in mixed-income projects, and that the HTF will not be the sole source of funding for operating cost assistance. Therefore, establishment of a cap on the amount of HTF funding in each annual grant that may be used for operating cost assistance is appropriate.

However, to provide more flexibility to grantees to develop and finance HTF-assisted projects, this interim rule establishes the cap at up to one-third of each annual grant. This interim rule also makes clear that the cap applies to both amounts used for operating cost assistance as well as the operating cost reserves. Within this cap, each fiscal year the grantee will have discretion in how it awards operating cost assistance to projects. The grantee may apply the one-third limit to all projects or adjust it accordingly, as long as no more than one-third of each annual grant is used for operating cost assistance and for operating cost reserves.

HUD also revised the proposed rule at this interim rule stage to address comments about the way in which operating cost assistance may be provided to a project. This interim rule establishes that a grantee may provide operating cost assistance to a project during the entire period of the affordability for the project. The written agreement between the grantee and the owner that commits funds from an HTF grant received in a single fiscal year may provide operating cost assistance over a period for multiple years as long as the grantee to meet its five-year expenditure deadline in § 93.400(d). Allowing such commitment provides the grantee with flexibility to manage its grant funds when providing operating cost assistance to a project; however, HUD will recapture funds not expended by the five-year deadline. Because operating cost assistance is an eligible activity and may be provided to a project by more than one grant, the prohibition in the rule on providing additional HTF funds to a project during the period of affordability (§ 93.205(a)) does not apply to renewal of funds committed to operating cost assistance. The grantee may renew operating cost assistance for HTF-assisted units during the affordability period by executing written agreements after future fiscal year HTF grants are awarded.

If Section 8 project-based vouchers or other project-based rental assistance is made available to HTF projects for HTF-assisted units, HUD prohibits the use of HTF funds available for operating cost assistance for those same units, but such limitation will not hinder HTF implementation. Section 93.200(c) of the interim rule (§ 92.730(c) of the proposed rule) requires that only the actual cost of development and operation of HTF units can be charged to the HTF program, and describes the methods for allocating costs and determining HTF units in multi-unit projects. In this interim rule, HUD does not impose a limit on the use of Section 8 project-based vouchers in a project for which HTF is also providing operating cost assistance, as long as the Section 8 project-based voucher is not provided to the same unit receiving HTF operating cost assistance. HUD cannot guarantee that funds for project-based Section 8 or other project-based assistance will be appropriated for HTF-assisted projects; therefore, awards of HTF funding to projects should be made based on existing resources and underwriting.

HUD understands the need for both capital (replacement) and operating reserves in housing projects. When grantees provide HTF funding for a project, the need for annual or monthly contributions to these reserves are determined through the underwriting process. Funding for capital or operating reserves ''up front'' for the present value of the entire amount needed over the required period of affordability (30 years) is not possible if the HTF funds are appropriated, as Federal funds cannot be drawn in that manner, years in advance of need. However, funding for the HTF may come from non-appropriated sources, *i.e.,* the proceeds from GSEs as described in section 1337 of the Act. Therefore, in the interim rule HUD establishes separate requirements for operating cost reserves funded by appropriated and non-appropriated funds.

If the operating cost assistance reserve is funded with appropriated HTF funds, the allowable amount of the reserve may not exceed the amount necessary to provide operating cost assistance to the HTF-assisted units in an HTF-assisted project for a period of up to five years. Because operating cost assistance reserves are an eligible activity and may be provided by more than one grant, the prohibition on providing additional HTF funds to a project during the period of affordability (§ 93.205(a)) does not apply to renewal of operating cost assistance reserves. The grantee may renew operating cost assistance reserves for HTF-assisted units during the affordability period by executing written agreements after future fiscal year HTF grants are awarded. The grantee must demonstrate the necessity of the reserve amount based on an analysis of

potential deficits remaining after the expected rent payments for the HTF-assisted unit are applied to the HTF-assisted unit's expected share of operating costs.

If the operating cost assistance reserve is funded with non-appropriated HTF funds, the amount necessary to fund the reserve must be calculated using the same methodology; however, the reserve may be funded for the amount estimated to be necessary for the entire period of affordability up front, or if this amount would exceed the cap (one-third of each annual grant), could be funded in phases from future grants determined to be suitable and necessary to secure advantageous financing. HUD will provide guidance and training to states about underwriting standards for investment of HTF funds and establishing replacement reserves to provide necessary rehabilitation during the period of affordability in their HTF program guidelines.

Administration and Planning Costs § 92.732

As noted earlier in this preamble, the administrative costs allowable by statute in the HTF program cannot exceed 10 percent of the annual grant. In § 92.732, HUD proposed eligible administrative and planning costs similar to the HOME program at § 92.207.

Comments: HUD received very few comments regarding the entity eligible for the 10 percent allocation to administrative and planning costs. One commenter suggested that HUD's rule clarify that only the agency responsible for the award, compliance, monitoring, and reporting of HTF funds is eligible and another commented that these funds should only be charged by the subgrantee, not the grantee. Other commenters offered recommendations about what should and should not be considered an eligible administrative and planning cost. A commenter stated that monitoring funds should be included, another stated project delivery costs (*i.e.,* inspections, work write-ups) should not be eligible to charge as administrative costs, and another requested clarification that the administrative costs in § 92.732(b)(2) are not the same as prohibited travel costs at section 1338(c)(10)(D)(i)(V) of the Act. Another commenter suggested that HUD's rule require the allocation to administrative and planning costs be proportional to the amount of HTF units in the project. Another commenter expressed concern that the 10 percent cap on administrative costs is not enough to cover all the monitoring requirements. A commenter requested that HUD make clear whether the amounts available for rental housing and homeownership activities are calculated based on the funds available after 10 percent of the annual formula grant is deducted for administrative costs.

HUD Response: This interim rule permits grantees to charge monitoring fees to cover the costs of required monitoring. The HTF grantee (State or State-designated entity) may use up to 10 percent of its annual grant for administrative costs. A grantee may provide funding for administrative costs to subgrantees. Program-related travel that is eligible under § 92.732(b)(2) remains an eligible cost in this rule, as this is not the same type of travel prohibited in section 1338(c)(10)(D)(i)(V) of the Act. Only non-program-related travel is prohibited as an eligible cost in the HTF statute. The Act permits up to 10 percent of the annual HTF grant to be used for homeownership activities, and up to 10 percent of the grant for administrative costs. Therefore, up to 10 percent of each annual grant may be spent on administrative costs, up to 10 percent may be spent on eligible homeownership activities, and the remainder on eligible rental housing.

HTF and Public Housing and Rental Assistance Demonstration § 92.734

HUD proposed prohibiting the use of HTF funds for public housing, including public housing that is developed under the HOPE VI program.

Comments: Several commenters requested that HUD's rule explicitly include public housing authorities as eligible recipients of HTF funding. Some commenters requested that the development, preservation, and rehabilitation of public housing be allowed as an eligible activity, as the exclusion of public housing was not clearly mentioned in HERA or the Act; public housing tenants meet the HTF eligibility requirements and public housing funding sources are inadequate to meet the demands.

HUD Response: Public housing agencies (PHAs) are already eligible entities to be HTF recipients. They are eligible to apply for HTF funding if they have the required capacity defined in the HTF statute and at § 93.2. PHAs, if qualified as recipients, can compete for HTF funding to develop HTF-assisted projects. HUD has considered the comments that the HTF should be permitted to be used for public housing projects and agrees that there is a role for the HTF in public housing. HUD has decided to allow the use of HTF funds (1) in connection with the Choice and LIHTC programs for construction of new units that replace existing public housing properties; and (2) for the rehabilitation of existing public housing units in connection with the Rental Assistance Demonstration (RAD), Choice, and LIHTC programs.

When the HTF program proposed rule was published on October 29, 2010, RAD was not yet established. RAD was established by HUD's 2012 Appropriations Act (Pub. L. 112–55, 125 Stat. 552, approved November 18, 20111, at 125 Stat. 673). Consequently, there were no public comments submitted on the HTF program proposed rule about the possible interplay between HTF and RAD. However, with RAD now an active demonstration program, questions have been raised to HUD about whether HTF may used for RAD units, and HUD takes the opportunity to address those questions in this preamble. HTF funds can be used in connection with RAD for the rehabilitation of public housing properties in which assistance will be converted and used. HTF funds can also be used for rehabilitation of ''RAD units'' (that is public housing properties in which assistance has been converted) after conversion takes place. Such uses are not contrary to HUD's position that use of HTF funds for public housing is limited to use with other programs to rehabilitate or replace public housing properties, and not for the expansion of the public housing inventory, which can be achieved through other funding sources.

Prohibited Activities § 92.735

HUD proposed prohibited activities in § 92.735. To synchronize with the HOME program, prohibited activities and fees at § 92.735 mirror the HOME program regulation at § 92.214. In addition, § 92.735 also includes activities expressly prohibited in the HTF statute. Section 1338(c)(10)(D) of the Act provides that HTF funds may not be used for: Political activities; advocacy; lobbying, whether directly or through other parties; counseling services; travel expenses; and preparing or providing advice on tax returns. This statutory section further provides that, subject to the exception in section 1338(c)(10)(D)(iii) of the Act, HTF funds may not be used for administrative, outreach, or other costs of the grantee, or any other recipient of such grant amounts. The statutory exception to this prohibition is that a grantee may use up to 10 percent of the HTF grant for the administrative costs of carrying out its HTF-funded program, including homeownership counseling.

Comments: A commenter stated that several provisions, including provisions

on renewing operating assistance and grants for transit-oriented development projects, seem to conflict with the prohibition on using additional HTF assistance for previously assisted projects, and requested clarification. Several commenters requested that HUD eliminate the prohibition on using HTF funds in developments previously assisted with HTF. Alternatively, these commenters recommended that the final rule should limit the prohibition to 15 years after initial receipt of HTF funds, and allow for exceptions to the prohibition during the period of affordability. Other commenters stated that the rule should allow projects previously receiving HTF funds to obtain subsequent capital funds, operational expenses, and maintenance costs under the condition that the period of affordability would be reset, extended, or expanded to additional units upon receipt of additional HTF assistance. Another commenter stated that the final rule should include a provision that HUD has the ability to waive the prohibition in exchange for an extension of the affordability period.

HUD Response: Per the requirements of 24 CFR 93.300, HUD expects that HTF projects will be properly constructed or rehabilitation with HTF funds and underwritten to ensure that capital needs can be addressed at the appropriate time in the life cycle of the property. Therefore, HUD will not change the regulation to allow the addition of HTF funds after 15 years, as commenters suggested. To address concerns about projects that may need additional operating cost assistance during the 30-year period of affordability, HUD revised § 93.205(a).

Income Targeting Proposed §§ 92.736–92.737; Interim §§ 93.250–93.251

Sections 92.736 and 92.737 of the proposed rule set forth the proposed income targeting requirements, as required by section 1338(c)(7) of the Act, for HTF-assisted rental units and homeownership units, respectively.

The Act requires that not less than 75 percent shall be used for the benefit only of ELI families or families with incomes at or below the poverty line (whichever is greater). Not more than 25 percent may be used for the benefit only of VLI families. Under the rulemaking authority of section 1338(g) of the Act, the Secretary has the discretion to direct grantees, in any given year, to use more than 75 percent of the HTF funds for the benefit only of ELI families or families with incomes at or below the poverty line, whichever is greater. HUD proposed that for the first year in which HTF funds are made available, of the amount made available for rental and homeownership housing, grantees are required to expend 100 percent of HTF funds to provide rental and homeownership housing for ELI households. The proposed rule provided that the HUD would publish subsequent income targeting requirements when HUD's allocation amounts to states are published.

Comments: HUD received many comments opposing the proposed targeting of 100 percent of the HTF funds to ELI households in the first year that funding is provided under the program. The commenters stated that the income targeting should not change between the first year and subsequent years of funding, as it will make the HTF more difficult to administer. Commenters also stated that this approach to targeting is not reflective of the statute.

Several commenters expressed support for targeting some VLI households in the first year of funding, with one commenter expressing concern that there may not be adequate local support to target ELI households exclusively. Other commenters requested that HUD continue to target 100 percent of ELI households until the shortage of ELI housing is resolved. Several commenters expressed concern that the proposed income targets will limit the use of HTF funds in rural and non-urban areas. Another commenter recommended that the proposed language be revised to explicitly state that any portion of HTF funding not be targeted to ELI households and should be used for VLI households only.

HUD also received many comments advising of challenges resulting from use of HTF funds for homeownership activities targeted at ELI households, with many of these commenters suggesting that HTF funding for homeownership would be better served targeting VLI households or other income groups.

HUD Response: HUD is aware that changes over time to income targeting may require grantees to adjust their approaches to using HTF funds to produce affordable housing, but believes this necessary in order to target limited resources to ELI households. There is a well-documented and overwhelming need to increase the supply of housing targeted to ELI households within each grantee's jurisdiction.

However, in consideration of the comments received, at this interim rule stage, HUD adjusted the targeting based on the amount of resources being made available through the HTF. With limited resources available for production of affordable housing targeted to ELI households, HUD has determined that targeting 100 percent of HTF to ELI households is appropriate if the amount available in a fiscal year for HTF is less than $1 billion. If the amount exceeds $1 billion, grantees may spend up to 25 percent for the benefit of VLI households. In either scenario, any funds not used for ELI households must be used to serve VLI households.

HUD acknowledges the commenters' concerns regarding the difficulty of providing homeownership assistance to ELI households. The statute and regulation are clear—there is no minimum percentage of HTF funds to be spent on homeownership, only a maximum percentage (10 percent). If HTF-eligible homeownership activities are not appropriate for ELI households in their jurisdictions, grantees are not required to use HTF funds for homeownership projects. HUD believes grantees are in the best position to determine whether a homeownership program for ELI or VLI households is appropriate within their jurisdictions. Public input on the use of HTF funds for rental housing or homeownership must be sought through public participation on a grantee's proposed HTF allocation plan.

Project Requirements Proposed §§ 92.740–92.750; Interim §§ 93.300–93.306

In §§ 92.740 through 92.750, HUD proposed requirements applicable to HTF-assisted housing projects. HUD proposed maximum per-unit development subsidy, underwriting, and subsidy layering requirements at § 92.740. To align with the HOME rule, the HTF proposed rule at § 92.740 mirrored the HOME Prohibited Activities and Fees provisions in § 92.250, with the exception of the maximum per-unit development subsidy amount section. The maximum per-unit development subsidy amount section is now § 93.300.

Maximum Per-Unit Subsidy, Underwriting and Subsidy Layering § 92.740

At § 92.740(a), HUD proposed requiring the grantee to establish maximum limitations on the amount of HTF funds the grantee may invest on a per-unit basis. In § 92.740(b), HUD proposed requiring the grantee to perform subsidy layering analysis before committing HTF funds to a project. Included in this proposed provision was the requirement that the grantee must determine that costs are reasonable, examine the sources and uses of funds, and ensure that the amounts available and their use are necessary to provide

quality affordable rental or homeownership housing for ELI households for the affordability period (30 years). The proposed rule also stated that recipients of HTF-assisted projects may not receive undue returns on their investments.

Comments: Of the commenters that submitted comments on this provision, the majority addressed the proposed requirement that the grantee must establish a maximum per-unit development subsidy limit. A few commenters opposed that the subsidy limit be established as a total dollar amount and suggested the requirement be revised to allow States to set the maximum subsidy limit as a percentage of the project cost on a per-project basis. Another commenter wrote that States should have the flexibility to establish their maximum per-unit subsidy at 100 percent of the development costs for HTF-assisted units. A commenter suggested that the maximum per-unit subsidy requirement at § 92.710 be eliminated. Finally, a commenter stated that the per-unit subsidy limit and subsidy layering should only take into account capital development costs.

With respect to a subsidy layering review, a commenter suggested that HUD's rule should allow a subsidy layering review, conducted as a requirement of another program to satisfy the subsidy layering review for an HTF project. Another commenter suggested that the language in the proposed rule be clarified so that it is not interpreted to mean that certification of underwriting and subsidy layering requires HUD-specified processes, standards, and forms because it would be burdensome. Another commenter suggested that HUD establish minimum underwriting standards for homeownership.

HUD Response: This interim rule adopts this provision as essentially proposed, although HUD revised the language to more closely mirror the language on subsidy layering from the HOME final rule. HUD does not agree that maximum subsidy limits should be established based on a percentage of total project cost. Some project costs are not eligible HTF costs, and one of the purposes of this requirement is to ensure the determination of the cost of HTF-assisted housing units includes a cost reasonableness test. With respect to a subsidy layering review, HUD does not prescribe specific subsidy layering forms or processes. The grantee may use the subsidy layering reviews conducted by other project funders, but a subsidy layering review conducted by another agency or funder does not ''satisfy'' the proposed requirement in § 92.740(b) (in this rule at § 93.300(b) unless the review is completed in accordance with the HTF grantee's standards.

Grantees must establish the minimum underwriting standards for their HTF-funded homeownership programs, as required by § 93.304.

To address comments on maximum subsidy limits, HUD chose not to establish national maximum subsidy limits that would be published by HUD. The amount of subsidy needed to produce affordable rental units targeted to ELI or VLI households will vary depending upon the project proforma. It is possible that in some projects, the entire development cost of an HTF unit must be paid for with HTF funds in order to achieve affordability. For example, it would be desirable to pay the entire development cost of HTF units so that they carry no debt service because rents are likely to be insufficient to pay for the debt service of the units. However, to address accountability, HUD added language to require grantees to adopt maximum subsidy limits that are appropriate for non-luxury housing units, based on reasonable and actual costs of developing such housing in the area.

Property Standards §§ 92.741 Through 92.745, Interim § 93.301

At the proposed rule stage, HUD proposed property standards applicable to HTF-assisted properties at §§ 92.741 through 92.745. Section 92.741 contains the property standards for new construction, § 92.742 establishes the standards for housing undergoing rehabilitation, § 92.743 contains the property standards for existing housing that is acquired with HTF funds, § 92.744 establishes property standards for manufactured housing, and § 92.745 establishes ongoing property standards for rental housing during the period of affordability. HUD requested comments from interested parties on how additional minimum property standards may be imposed to increase the efficiency and reduce the operating costs of HTF assisted units.

Comments: Several commenters stated that HUD's rule should provide more flexibility in adopting property and energy efficiency standards and that the proposed property standards are too specific. A commenter stated that HUD's rule should specify who will conduct the environmental reviews for HTF projects. Several commenters stated that the units must meet habitability standard requirements, but not necessarily the use of Housing Quality Standards (HQS). Another commenter stated that HUD's rule should require properties to be free of all health and safety standards and specify the life-threatening conditions that must be addressed.

A commenter stated that HUD's rule should provide standards that will be applied on a building-by-building basis. A few commenters stated that the proposed efficiency requirements will drive up the costs of developing ELI units. A commenter stated that for major life systems HUD should clarify improvements necessary to meet the standard. Another commenter stated that the term for the useful life is burdensome and too expensive.

A commenter requested that buildings seeking historic tax credits or that are located in historic districts be provided with an exception from property requirements. Another commenter stated that the property standards will make it difficult for developers to use HTF funding to buy existing properties for rehabilitation.

A commenter stated that HUD's rule should include a ''discreet'' funding allocation to create affordable and accessible housing for people with developmental disabilities. Several commenters stated that HUD's rule should require ''visitability'' and ''universal design.'' Other commenters stated that HUD's rule should address accessibility by requiring 100 percent of units in new construction and substantial rehabilitation projects be both visitable by wheelchair users and adaptable, and that 30 percent of the units are fully accessible.

HUD Response: To ensure compatibility with the HOME rule and in an effort to ease implementation of HTF by maintaining consistency with the requirements of the HOME rule to the extent feasible, this interim rule adopts the language used in the HOME final rule property standards section at § 92.251, with the exception of the environmental review requirements.

For the HTF program, HUD proposed at minimum that all HTF-assisted units that are newly constructed or undergoing gut rehabilitation must be certified that they meet the guidelines for ENERGY STAR-Qualified New Homes (for residential buildings up to three stories) or exceed, by 20 percent, the energy efficiency requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2007, Appendix G: Performance Rating Method (for residential buildings over three stories), as defined in § 92.741. A Home Energy Rater (HER) must inspect the units to certify that the units meet the ENERGY STAR guidelines. HUD does not adopt these proposed requirements in this interim rule. HUD

plans to establish new and consistent energy and water efficiency requirements for both the HTF program and HOME program through separate rulemaking. For new construction, the interim rule adopts the energy efficiency standards established under section 109 of the Cranston-Gonzalez National Affordable Housing Act, so that the standards are the same for HTF and HOME.

HTF grantees are responsible for ensuring compliance with these environmental review requirements. HUD knows of no justification to provide a blanket exemption of HTF-assisted projects seeking historic tax credits or located in historic districts from property requirements. While HUD would encourage grantees to include ''visitability'' standards in the development of HTF-assisted and other affordable housing, these visitability standards are not required by any Federal statute and are not included in this rule.

HTF Property Standards Environmental Requirements

Comments: Several commenters stated that the rule creates a new definition for ''wetlands.'' These commenters stated that HUD's rule should incorporate the U.S. Army Corps of Engineers and the Environmental Protection Agency definition in regulations pursuant to the Clean Water Act. A commenter stated that the regulations for environmental remediation, testing for toxins, and other property standards are too detailed. A commenter suggested that the HTF rule should include language permitting States to request that reports are prepared in accordance with the most current ASTM standard. Another commenter stated that for HTF projects developed within a quarter mile of a site with an unclosed environmental case status, the final rule should require a written justification for determination that the proposed site does not pose a health and safety risk for the HTF project. A commenter recommended that the HTF rule require a State to maintain files with written justification for the State's determination that a proposed site does not pose a health and safety risk for an HTF project located within a quarter mile of a site with a reported Federal, State, or local environmental case status that is open. Another commenter stated that HUD's rule needs to specify who will conduct the environmental review for HTF projects. Several commenters stated the proposed rule was overly detailed and the final rule should replace these requirements with standards from the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). Another commenter stated that HUD's rule should clarify that a single environmental review may satisfy the requirements for both the HTF and project-based voucher programs, when both sources of assistance are used. Another commenter requested an exception in the property requirements for buildings seeking historic tax credits or located in historic districts.

HUD Response: This rule adopts the definition of ''wetland'' as defined in HUD regulation at 24 CFR 55.2(b)(11) and which is used for all HUD programs. The guidance within the regulation for environmental remediation, testing for toxins, and other standards must remain detailed because the purpose of the regulations is to assist grantees to comply with the requirements of the regulations.

HUD agrees that its HTF rule should not include references to the ASTM year and rather include language that reports should be prepared in accordance with the most current ASTM standard. HUD already requires HTF projects to avoid sites located within .25 miles of a Superfund or Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from the U.S. Environmental Protection Agency or the appropriate state agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended use of the property.

HUD disagrees with the comment that the HTF rule should clarify that a single environmental review may satisfy requirements for both HTF and project-based voucher (PBV) programs. The grantee that is responsible for these environmental requirements may in some cases be the same as the ''responsible entity'' that conducts an environmental review under 24 CFR part 58 for a PBV project, and much of the environmental information needed to comply with both requirements may be the same. However, the HTF environmental requirements, to be codified at § 93.301(f), are not identical to the environmental review requirements under part 58 for PBV projects. For example, the HTF environmental requirements do not include certain interagency consultation and public notice requirements that are required for PBV projects under some of the environmental laws and authorities cited in part 58.

Qualification as Affordable Housing: Rental Housing § 92.746, Interim § 93.302

In § 92.746(a), HUD proposed that all HTF-assisted rental housing be occupied only by ELI families. Section 92.746(b) proposed to establish the maximum rent (including utilities) for HTF-assisted units at 30 percent of the annual income of a family whose income equals 30 percent of the area median income, or 30 percent of the poverty line, whichever is greater. Section 92.746(c) provided that grantees must establish maximum monthly allowances for utilities and services (excluding telephone, television, and Internet service), and must approve rents proposed by the owner for HTF units. Section 92.746(d) proposed to establish an affordability period of not less than 30 years for rental housing assisted with HTF funds. Section 92.746(e) proposed to require that HTF project owners verify the initial and continued eligibility of tenants living in HTF-assisted rental units and establishes the methods by which HTF project owners must verify tenant income.

Comments: Several commenters requested that HUD adopt income-based limits that cap the amount of rent paid by tenants at 30 percent of household income. Several other commenters suggested creating operating subsidy reserves to fund income-based rents, and requiring a percentage of units set aside for people with disabilities or people who receive their income from supplemental social security (SSI) income. Some commenters expressed concern about individuals whose sole source of income is SSI, because many of these people have incomes well below 30 percent of AMI and without operating subsidy for HTF-assisted units tenants will be forced to pay a substantial proportion of their income toward rent (or lose the opportunity to benefit from HTF-assisted housing).

Several commenters asked for clarification whether there will only be one rent limit for the HTF program or whether there will be different rent limits for ELI and VLI households. Several stated that there should be a means for limiting a tenant's rent burden depending on the type of rental subsidy. Another commenter stated that subsidy amounts should also be adjusted downward for units not carrying any debt to avoid over-subsidizing units. Another commenter asked whether HUD could provide rent and income limit levels in 5 percent increments.

A commenter stated that grantees should be permitted to set utility allowances for new projects that best reflect the costs to tenants. Another stated that HUD's rule should provide additional protections to tenants regarding the utility allowance, including notice, opportunity to seek review, and allowance for utilities be provided in the lease.

Many commenters stated that HUD should increase the minimum period of affordability proposed in the rule to 40, 45, or 55 years, and that HUD's rule should incentivize projects which agree to longer periods of affordability. Another commenter stated that the rule should increase the minimum period of affordability for non-low income housing tax credit (LIHTC) projects, but only if HUD develops a means for recapitalizing projects and applying the affordability restrictions to the land, not the building. Several commenters stated that the determination of the period of affordability should be left to the discretion of the State, or should match the period of affordability used by other funding sources.

HUD Response: Unlike public housing, the HTF has no separate annual appropriation source of funding for operating costs. In any given year, if no funding for the HTF is provided, it is possible that no operating cost assistance would be available for HTF-assisted units. Therefore, while operating costs may be paid with HTF funds, the assistance cannot be based on a formula that assumes income-based rents and an annual appropriation to pay for operating costs. For this reason, it is necessary to establish fixed rents for the HTF for underwriting purposes and required subsidy layering analyses. Section 8 project-based vouchers may be made available to HTF-assisted units, and these vouchers alleviate cost burdens for ELI tenants, including individuals whose source of income is from Supplemental Social Security Income.

This interim rule includes rent limits for both extremely low-income and very low-income households. For extremely low-income households, rents are set at 30 percent for a households at 30 percent of the area median income. For very low-income households, rents are set at 30 percent for households at 50 percent of the area median income. HUD will provide the actual rent limits for each State.

If utility data are available on a project-by-project basis or utilities are individually metered, it would be permissible to establish utility allowances more reflective of the actual cost for the HTF-assisted unit.

HTF grantees are allowed to impose longer periods of affordability, beyond the period in the regulation. HUD anticipates that States may adopt criteria whereby projects will be incentivized to adopt longer periods of affordability.

Tenant Protections and Selection§ 92.747, Interim § 93.303

In § 92.747, HUD proposed tenant protection, lease, and selection requirements, and incorporated the requirements of section 1338(c)(8) of the Act.

Comments: A commenter recommended greater safeguards be required for tenant selection, including prohibition of local residency or employment preferences, the use of lottery-based selection, and strong affirmative marketing and outreach requirements. A few commenters suggested HUD's rule be revised to include additional tenant and homeowner protections, including the right to organize, associate, advocate for stronger protections without fear of retaliation. Other commenters requested that HUD's rule to clarify tenant rights regarding the applicant screening process, the prohibition on eviction without good cause, the lease provision protections, and how tenants can participate and protect their tenant rights. A few commenters pointed out the importance of retaining economic diversity in projects containing HTF-assisted units, and suggested that HUD's rule incorporate some mixed-income standards and limits on the number of families using vouchers. Another commenter suggested that § 92.747(c) be removed to permit residents to pursue a ''housing first'' model for ending homelessness. Some commenters requested that the protections offered to people receiving any type of tenant-based assistance from being denied access to HTF-assisted units be enhanced.

A commenter provided several comments about resident access to judicial review. The commenter stated that the rule should include greater access to judicial review for tenants and applicants, and that the regulations should require residential leases to include any conditions of tenancy found in HTF allocation plans and to explicitly state that a resident or tenant organization may seek judicial enforcement of plan violations which result in injury. The commenter recommended that grant agreements with subgrantees and recipients should incorporate a resident complaint review, grievance system, and right to judicial enforcement. Another commenter stated that if HUD has the right to initiate an administrative hearing or impose sanctions, then residents and applicants should have the right to join as a party to the proceeding. The commenter stated that the right to pursue an independent action for redress of injury in court should be included in the rule and incorporated into residential leases.

Another commenter stated that a reference to the Violence Against Women Act (42 U.S.C. 13701 *et seq.*) should be added to § 92.747(c).

HUD Response: The Violence Against Women Act of 2013 (VAWA 2013), enacted March 7, 2013, did not specify HTF as a covered program. The possible applicability of VAWA to HUD programs not listed in VAWA 2013 will be addressed in HUD's upcoming proposed rule on VAWA 2013.

Section 93.303 of the rule prohibits lease terms which require tenants residing in HTF-assisted units to waive their rights with respect to their tenancy. The statute does not create any right to judicial review; however, State and local law may provide rights to judicial review of HTF grantees or landlords of HTF-assisted properties. HUD's proposed language is compliant with applicable civil rights laws and regulations, including section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, and therefore is not changed at this interim rule stage. Additionally, the proposed rule language did not present problems for the particular permanent supportive housing model favored by several commenters, which was their primary concern, and therefore this language is not changed at the interim rule stage. In fact, adopting the suggested language would limit flexibility to use other models of permanent supportive housing.

Qualification as Affordable Housing: Homeownership § 92.748, Final § 93.304

In § 92.748(a), the proposed rule required that homeownership activities funded by the HTF must be for first-time homebuyers. Section 92.748(b) proposed to require that only single family housing, as defined in § 92.2, is eligible for HTF-assisted homeownership activities. Section 92.748(c) would require that all HTF-assisted homeownership activities apply to modest housing, in accordance with § 92.749. Section 92.748(d) proposed to establish the requirements for HTF requirements for first-time homebuyers and income requirements. Section 92.748(e) proposed to establish the period of affordability for HTF-assisted homeownership activities. Section 92.748(f) proposed to establish the

resale requirements for homeownership units assisted by the HTF.

Comments: Some commenters suggested that HUD's rule should include a recapture provision for homeownership funds, as permitted under the HOME program, and they expressed concern that limiting homeownership properties to resale, without the option of recapture, will be too burdensome for grantees and subgrantees. Other commenters stated that HUD's rule should include more language to encourage the use of land trusts.

HUD Response: HUD agrees with commenters that the recapture provisions should be added to the HTF rule. Accordingly, this rule, at § 93.304, adopts the structure of the HOME program requirements for recapture, with adjustments to the subsidy amounts to reflect the greater need for subsidy for very low-income homebuyers. The periods of affordability also differ from the HOME program to tiers that reflect the maximum period of affordability (30 years) for the HTF program. The use of land trusts in conjunction with the HTF is permitted. However, HUD does not agree that the HTF rule needs modification to encourage the use of land trusts; guidance and technical assistance may be provided in the future on this topic.

Other Federal Requirements Proposed § 92.760–92.764; Final § 93.350–93.355

Proposed §§ 92.760 through 92.764 set forth other Federal requirements that are applicable to the use of HTF funds, including nondiscrimination, affirmative marketing, lead-based paint, relocation, and funding accountability and transparency requirements. However, the proposed regulations inadvertently omitted a provision in section 1337(f) of the Act that prohibits the use of HTF funds in conjunction with property taken by eminent domain unless eminent domain is employed only for a public use. The HTF regulation at § 93.355 includes this statutory prohibition.

Program Administration Proposed § 92.770–92.779; Final § 93.400–93.409

Proposed §§ 92.770 through 92.779 set forth the conditions and requirements by which States are to administer their HTF funds, including HTF accounts, allocation and reallocation of HTF funds, program disbursement and the establishment of an information system, written agreement, onsite inspections, financial and project reporting, record retention, and audit requirements.

Comments: Several commenters suggested that HUD eliminate duplicative monitoring, review, and inspection requirements. A few commenters stated that if a subgrantee receives HOME funding, the subgrantee should be directly responsible for compliance and alleviate grantees of the burden of annual performance reviews. A commenter recommended revising the HTF audit requirements to mirror HOME and that additional audit requirements should be removed. A few commenters suggested that equivalent onsite property inspections for other public funding programs and construction oversight by third parties should be allowed to satisfy the HTF requirements to avoid duplicative inspections. A commenter stated that the rule should permit HOME inspection standards rather than Uniform Physical Conditions Standards (UPCS) standards. Another commenter stated that the initial inspection during the period of affordability should be required to occur within 24 months instead of 12 months, as proposed, to align with LIHTC requirements. A commenter stated that the requirement to follow up with an inspection within 12 months of observing a deficiency during an onsite inspection is burdensome and suggested that evidence of the correction, with the right to re-inspect, should be sufficient.

Some commenters offered recommendations for other administrative issues. A commenter suggested that the project completion date for HTF units should be the date the project is placed in service. Another commenter stated that HUD's rule should clarify that the recordkeeping requirements in § 92.778 would allow a grantee to delegate record maintenance to the project owner or manager who would make the records accessible to the grantee.

Several commenters stated that the rule should increase opportunities for forgiveness under the repayment and recapture provisions. Commenters suggested that the rule permit a prorated reduction of the repayment obligation based on the extent that the affordability period was satisfied. A commenter suggested that this prorated reduction in the repayment obligation also apply to HTF-assisted housing lost through a foreclosure action, natural events or disasters, or similar events that are not the result of malfeasance on the part of the grantee or subgrantee. A few commenters suggested that complete forgiveness should be permitted when there have been best faith efforts to avoid foreclosure. A commenter stated that the repayment provisions are too onerous and repayments for failed ELI housing projects should be limited to instances when the grantee directly provides funds for an ineligible activity.

Some commenters offered suggestions about the foreclosure provisions. A commenter suggested that if HUD is the foreclosing entity, the affordability restrictions should not terminate and funds should not be required to be repaid. Another commenter suggested that the rule should authorize HUD and the grantee to modify the affordability restrictions in limited circumstances (*e.g.,* loss of rental assistance through no fault of the owner), if doing so is necessary to avoid a foreclosure and complete loss of affordable units. Another commenter suggested that HUD should require grantees to use purchase options, right of first refusal, or other preemptive rights to purchase as tools to protect HTF-assisted housing from foreclosure or deed in lieu of foreclosure. Another commenter suggested that additional data collection requirements be required. The commenter attached a list of 22 project-level data points that should be listed in § 92.778(a)(2)(i).

HUD Response: The HTF statute includes mandatory monitoring, reporting, and audit requirements. HUD does not have the authority to change these requirements.

Except where that statute differs, or where policy determinations about the HTF have been made by HUD that preclude alignment, HUD adopted the majority of the requirements of the HOME program for the HTF rule, but the HTF audit requirements cannot be modified to mirror HOME requirements, as suggested by a commenter, because the HTF statute imposes different requirements for the audit of HTF-assisted projects than what is required by the HOME program.

HUD does not agree that grantees are relieved of responsibility for compliance if a subgrantee receives the HTF funds. The statute makes clear that the State or State-designated entity is the grantee of the HTF funds and that compliance with all requirements, including compliance monitoring of subgrantees, is the responsibility of the grantee. Moreover, HUD has no relationship with a subgrantee and has no basis to take action against a subgrantee.

This interim rule requires that Uniform Physical Condition Standards (UPCS) be incorporated into the property standards, as is the case with the property standards for the HOME program. This will facilitate alignment of HTF-assisted projects with projects assisted by the LIHTC program and HOME. Training and guidance will be

provided to address some of the concerns about implementing UPCS.

HUD has chosen not to synchronize when project completion occurs for an HTF-assisted projects with when an LIHTC project is placed in service. The HTF rule requires beneficiary reporting that is different than that required for LIHTCs. The project completion date must ensure timely occupancy. Accordingly, HUD adopts the language as proposed.

One commenter suggested that the rule should authorize HUD and the grantee to modify the affordability restrictions in limited circumstances (*e.g.,* loss of rental assistance through no fault of the owner). To ensure compatibility with the HOME rule and in an effort to ease HTF implementation, this interim rule contains language that is consistent with the repayment language in the HOME regulations. For natural events or other disasters, insurance proceeds should be used to replace the lost housing. In the case of foreclosure, repayment would not be required if the affordability restrictions are preserved and the project continues to meet HTF requirements. Grantees have the option, rather than a requirement, of using preemptive rights to ensure flexibility for each grantee to ensure HTF projects remain affordable. The repayment and foreclosure provisions are required and the language is adopted in this interim rule as proposed.

Performance Review and Sanctions Review Proposed § 92.780–92.783; Final § 93.450–93.453

HUD proposed that grantees report on their progress and performance in meeting the requirements of the HTF in HUD's Integrated Disbursement and Information System (IDIS) and the consolidated plan. The statutory requirements for corrective and remedial actions at section 1338(e)(1)(B) of the Act are reflected in § 92.782. The statutory requirements at section 1338(e)(2)(B) of the Act for notification of determination and opportunity for hearing and sanctions are reflected in § 92.783.

Comments: One commenter recommended that performance report on grantees be posted regularly on public Web sites.

HUD Response: In this interim rule, HUD moved the requirement for a HTF performance report to the Consolidated Plan regulations at 24 CFR part 91. The HTF performance report is included in the performance reports for the consolidated plans in 24 CFR 91.520, thereby subjecting the report to the citizen participation plan of the grantee and subgrantee. In addition, the HTF grant is subject to the requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, approved September 26, 2006), as amended by section 6202 of Public Law 110–252, approved June 30, 2008 (Transparency Act) (See § 93.354 of the HTF regulations.) [5]

Other Comments

Align the HTF With Other Programs

Comments: Some commenters suggested that the HTF be coordinated with and mirror the LIHTC rules to the greatest extent possible to provide maximum flexibility. They suggested that LIHTC is more likely to be used in combination with HTF funds for development than HOME. Other commenters suggested that the HTF requirements should be aligned with other program requirements (*e.g.,* such as those required under HUD's Section 811 Supportive Housing for Persons with Disabilities program, HUD's Housing Choice voucher program, U.S. Department of Health and Human Services program, Supplemental Security Income, and U.S. Department of Veterans Affairs) and HUD should identify any potential conflicts between the program requirements. A few commenters recommended that HUD's HTF rule should waive requirements of Section 8 project-based vouchers that complicate using them in HTF projects. A few commenters suggested that HUD eliminate duplicative reviews and requirements that create conflict when the HTF is combined with other sources of funding in development projects.

HUD Response: HUD expects that HTF funds will be combined with other sources of private funding and financing typically used for the development of affordable housing, such as LIHTCs. The affordability period for HTF-assisted units is consistent with the 30-year affordability period (compliance period plus extended use period) for LIHTC projects. Grantees may also establish longer affordability periods in their HTF allocation plans. The VLI income targeting and frequency of onsite inspections during the period of affordability regulations in the HTF also align with LIHTC. Some HTF requirements, such as ELI income targeting and rents, are statutory and HUD does not have the discretion to change these statutory requirements to align with other programs. Also, the HTF rule cannot waive the requirements of other Federal programs. In order to allow maximum flexibility when combining and coordinating the HTF with other Federal funding sources, HUD streamlined the HTF requirements and aligned them with other Federal programs (*e.g.,* HOME, LIHTC, Federal Housing Administration (FHA), Public Housing, and other HUD programs) to the greatest extent possible, given statutory constraints and policy decisions by HUD.

Manufactured Housing

In the proposed rule, HUD stated that HTF funds may be used to purchase and/or rehabilitate a manufactured housing unit, or purchase the land upon which a manufactured housing unit is located. HUD stated that the manufactured housing unit must, at the time of project completion, be connected to permanent utility hookups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. The proposed rule also required that construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. HUD noted that these standards pre-empt State and local codes covering the same aspects of performance for such housing.

Comments: A commenter stated that language should be added to the rule to clarify that manufactured housing can be purchased with HTF funds for both rental and homeownership purposes. One commenter stated that eligible relocation costs should include one-for-one replacement when manufactured homes are demolished or converted for another use. A commenter recommended that the language in the proposed rule should be changed to clarify that HTF funds may be used to purchase the land under manufactured homes to preserve the affordability of these homes, and another stated that the requirement that the land under assisted manufactured housing be owned or leased will be difficult to meet. Another commenter states that the proposed rule conflicts with other HUD policies, including the Model Manufactured Home Installation Standards and Manufactured Housing Installation Rules and Regulations, 24 CFR parts 3285 through 3286. A commenter stated that HUD's rule should eliminate the ''permanent foundation requirement'' to avoid confusion, and to align with 24 CFR parts 3285 through 3286. Another

[5] The Transparency Act requires disclosure to the public of all entities or organizations receiving Federal funds, beginning in fiscal year 2007. The disclosure of such funds can be found at the USAspending.gov Web site, which is managed by the Office of Management and Budget.

commenter stated that HUD's rule should create an exception to the requirement that homeownership funds be targeted to income-eligible, first-time homebuyers because manufactured homes are a means for older, low-income homeowners to transition from their current home to a more affordable alternative, and they are often not first-time homebuyers. Another commenter stated that HUD's rule should include mobile home park infrastructure improvements as eligible costs and give more consideration to deteriorating park infrastructure.

HUD Response: The HTF statute requires that homebuyer assistance be provided to first-time homebuyers only—this would apply to manufactured housing that is purchased by eligible families with HTF assistance.

This interim rule does not prohibit the expenditure of HTF funds on manufactured housing that is rental housing. A State may award HTF funds for the development of a manufactured housing park for rental units. The Act does not contain any requirement for the one-for-one replacement of housing units if HTF funds are used in the demolition or conversion of any unit.

If HTF funds are used to purchase land to develop a manufactured home, or relocate a manufactured home, the manufactured housing must be secured with a foundation system meeting 24 CFR part 3280.

The use of HTF funds for infrastructure to rehabilitate the parks in which manufactured homes are situated is only eligible if all units are rental housing with income eligible tenants. Infrastructure that is not on the site of the HTF project is not eligible for HTF financing.

Consistent with the HOME rule, the definition of ''permanent foundation'' in the HTF rule means a foundation system of supports that is capable of transferring all design loads to the ground that meets the requirements of 24 CFR 3282.12. This definition is also consistent with the FHA mortgage insurance requirements for all manufactured homes that must be constructed in conformance with the Federal Manufactured Home and Safety Standards, as evidenced by an affixed certification label in accordance with 24 CFR 3280.11.

III. Opportunity for Further Comment

As noted in the Summary portion at the beginning of this preamble, HUD is issuing this rule as an interim rule. It is HUD's intention that following funding of the HTF as provided in HERA, and allocations of funds to States as provided in this rule, HUD will open this interim rule for public comment to solicit comment on how these regulations work once funding is available and the grantees gain experience administering the HTF program.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''). This rule was determined to be economically significant as provided in section 3(f)(1) of the Order. The reasons for the determination are as follows:

As discussed above in this preamble, HERA charged HUD to establish, the formula for the distribution of HTF grants to states through regulation, and to follow that rule with one that implements the programmatic requirements for the HTF. Consistent with that statutory direction, on December 4, 2009 (74 FR 63938), HUD published a proposed rule submitting for public comment the proposed formula for allocating HTF funds. As the first rule to be issued in the rulemaking process for the HTF, the formula allocation constituted, on behalf of the entire HTF rulemaking, an economically significant regulatory action under Executive Order 12866. The preamble to the December 2009 rule summarized the economic impacts of the HTF program, as proposed to be implemented through the formula issued for public comment on December 4, 2009. (For a discussion of the economic impact, please see 74 FR 63940–63941.)

On October 29, 2010, HUD published the proposed program rule for the HTF (see 75 FR 66978). This interim rule incorporates the December 4, 2009, allocation formula rule and October 29, 2010, program rule. HUD's full economic analysis for the proposed allocation rule is available for inspection on HUD's Web site at *http://www.huduser.org/portal/publications/pubasst/riaforhtf.html*.

The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Under the HTF program, HUD makes grants to the relatively large entities of States or their designated housing entities for the purposes of preserving and increasing the supply of rental housing and increasing homeownership for eligible families. Therefore, the primary focus on the rule is on these large entities. The States and State-designated housing entities may, in turn, make funding available to recipients, which may include smaller entities (such as nonprofit or for-profit organizations), but the funding made available to recipients is provided under application procedures and requirements established by the States or State-designated housing entities, not HUD; however, the grantees must ensure their recipients' adherence to the statutory requirements and regulatory requirements promulgated by HUD.

Additionally, the regulatory text largely reflects statutory requirements of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*). Where HUD has exercised the discretion to elaborate on the statutory requirements, HUD has strived to closely model these procedures on existing development programs, which are familiar to entities likely to be participants under the new HTF program. For example, as noted earlier in this preamble, the HTF program adopts several definitions used under the HOME program. The organization of the HTF regulations is modeled after those for the HOME program, and HUD has elected to adopt many existing HOME program requirements. Given that HTF funding is statutorily provided for the benefit of the States and is to be allocated to the States, HUD has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made, at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which

implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That Finding remains applicable to this rule and can be found at *www.regulations.gov* under docket number FR–5246–F–03.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications, and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandate on any State, local, or tribal government or the private sector within the meaning of UMRA.

Congressional Review Act

This rule constitutes a ''major rule'' as defined in the Congressional Review Act (5 U.S.C. Chapter 8). The Congressional Review Act provides for major rules to have a 60-day delayed effective date.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned an OMB control number. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this rule is estimated as follows:

List of Subjects

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs-housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends 24 CFR chapter I as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, 12901–12912, and 12 U.S.C. 1301 *et seq.*

■ 2. In § 91.2, remove the word ''and'' at the end of paragraph (a)(3), remove the period at the end of paragraph (a)(4) and add ''; and'' in its place, and add paragraph (a)(5) to read as follows:

§ 91.2 Applicability.

(a) * * *

(5) The Housing Trust Fund (HTF) program (see 24 CFR part 93).

* * * * *

■ 3. In § 91.10, revise the first sentence of paragraph (a) to read as follows:

§ 91.10 Consolidated Program Year.

(a) Each of the following programs shall be administered by a jurisdiction on a single consolidated program year, established by the jurisdiction: CDBG, ESG, HOME, HOPWA, and HTF. * * * * * * * *

■ 4. In § 91.215, revise paragraph (b)(2) to read as follows:

§ 91.215 Strategic Plan.

* * * * *

(b) * * *

(2) The affordable housing section shall include specific objectives that describe proposed accomplishments the jurisdiction hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing, 24 CFR 92.254 for homeownership, and 24 CFR 93.302 and 24 CFR 93.304 (if the jurisdiction receives HTF funds from the State) over a specific time period.

* * * * *

■ 5. In § 91.220, add paragraph (l)(5) to read as follows:

§ 91.220 Action Plan.

* * * * *

(l) * * *

(5) *Housing Trust Fund.* (i) If the jurisdiction receives HTF funds from the State under 24 CFR 93.105, the action plan must include the HTF allocation plan (consistent with the State's HTF requirements) that describes the distribution of the HTF funds, and establishes the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the jurisdiction's priority housing needs. The plan must include the following:

(A) The plan must identify priority factors for funding that shall include the following: geographic distribution which is a description of the geographic areas of the State (including areas of low-income and minority concentration) in which it will direct assistance during the ensuing program year; the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner; in the case of rental housing projects, the extent to which rents for units in the project are affordable to extremely low-income families; in the case of rental housing projects, the duration of the units' affordability period; the merits of the application in meeting the priority housing needs of the jurisdiction (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, and housing that serves special needs populations); the location of existing affordable housing, and the extent to which the application makes use of non-federal funding sources.

(B) The plan must include the requirement that the application contain a description of the eligible activities to be conducted with the HTF funds (as provided in 24 CFR 93.200) and contain a certification by each eligible recipient that housing units assisted with the HTF will comply with HTF requirements. The plan must also describe eligibility requirements for recipients (as defined in 24 CFR 93.2).

(C) The plan must provide for performance goals, consistent with the jurisdiction's goals established under 24 CFR 91.215(b)(2).

(D) The plan must provide the jurisdiction's rehabilitation standards, as required by 24 CFR 93.301(b).

(E) If the jurisdiction intends to use HTF funds for first-time homebuyers, it must set forth the guidelines for resale or recapture, and obtain HUD's specific,

written approval, as required in § 93.304(f). Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action plan does not satisfy the requirement for specific HUD approval for resale or recapture guidelines.

(F) If the jurisdiction intends to use HTF funds for homebuyer assistance and does not use the HTF affordable homeownership limits for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with § 93.305.

(G) The jurisdiction may limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population only if described in the action plan.

(*1*) Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 93.350, and the jurisdiction must not limit or give preferences to students.

(*2*) The jurisdiction may permit rental housing owners to limit tenants or give a preference in accordance with 24 CFR 93.303 only if such limitation or preference is described in the action plan.

(H) The plan must describe the conditions under which the jurisdiction will refinance existing rental housing project debt.

(ii) [Reserved].

■ 6. In § 91.315, revise paragraph (b)(2) to read as follows:

§ 91.315 Strategic Plan.

* * * * *

(b) * * *

(2) The affordable housing section shall include specific objectives that describe proposed accomplishments the State hopes to achieve and must specify the number of extremely low-income, low-income, and moderate-income families to which the State will provide affordable housing, as defined in 24 CFR 92.252 for rental housing, 24 CFR 92.254 for homeownership, and 24 CFR 93.302 for rental housing and 24 CFR 93.304 for homeownership over a specific time period.

* * * * *

■ 7. In § 91.320, revise paragraph (k)(5) to read as follows:

§ 91.320 Action Plan.

* * * * *

(k) * * *

(5) *Housing Trust Fund.* The action plan must include the HTF allocation plan that describes the distribution of the HTF funds, and establishes the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the State's priority housing needs. The plan must also establish the State's maximum per-unit development subsidy limit for housing assisted with HTF funds. If the HTF funds will be used for first-time homebuyers, it must state the guidelines for resale and recapture as required in 24 CFR 93.304. The plan must reflect the State's decision to distribute HTF funds through grants to subgrantees and/or to select applications submitted by eligible recipients. If the State is selecting applications submitted by eligible recipients, the plan must include the following:

(i) The plan must provide priority for funding based on geographic diversity (as defined by the State in the consolidated plan); the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner; in the case of rental housing projects, the extent to which the project has Federal, State, or local project-based rental assistance so that rents are affordable to extremely low-income families; in the case of rental housing projects, the duration of the units' affordability period; the merits of the application in meeting the priority housing needs of the State (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, or housing that serves special needs populations); and the extent to which the application makes use of non-federal funding sources.

(ii) The plan must include the requirement that the application contain a description of the eligible activities to be conducted with the HTF funds (as provided in 24 CFR 93.200) and contain a certification by each eligible recipient that housing units assisted with the HTF will comply with HTF requirements. The plan must also describe eligibility requirements for recipients (as defined in 24 CFR 93.2).

(iii) The plan must provide for performance goals and benchmarks against which the State will measure its progress, consistent with the State's goals established under 24 CFR 91.315(b)(2).

(iv) The plan must include the State's rehabilitation standards, as required by 24 CFR 93.301(b)(1).

(v) If the State intends to use HTF funds for first-time homebuyers, it must set forth the guidelines for resale or recapture, and obtain HUD's specific, written approval, as required in § 93.304(f). Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action does not satisfy the requirement for specific HUD approval for resale or recapture guidelines.

(vi) If the State intends to use HTF funds for homebuyer assistance and does not use the HTF affordable homeownership limits for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with § 93.305.

(vii) The State may limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population only if described in the action plan.

(A) Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 93.350, and the State must not limit or give preferences to students.

(B) The State may permit rental housing owners to limit tenants or give a preference in accordance with 24 CFR 93.303(d)(3) only if such limitation or preference is described in the action plan.

(viii) The plan must describe the conditions under which the State will refinance existing debt.

■ 8. In § 91.520, redesignate paragraphs (h) and (i) as paragraphs (i) and (j), respectively and add a new paragraph (h) to read as follows:

§ 91.520 Performance reports.

* * * * *

(h) *HTF.* For jurisdictions receiving HTF funds, the report must describe the HTF program's accomplishments, and the extent to which the jurisdiction complied with its approved HTF allocation plan and the requirements of 24 CFR part 93.

* * * * *

■ 9. Add part 93 to read as follows:

PART 93—HOUSING TRUST FUND

Subpart A—General

93.1 Overview.
93.2 Definitions.
93.3 Waivers.

Subpart B—Allocation Formula; Reallocations

93.50 Formula allocation.
93.51 Formula factors.
93.52 Minimum allocations.
93.53 **Federal Register** notice of formula allocations.
93.54 Reallocations by formula.

Subpart C—Participation and Submission Requirements; Distribution of Assistance

93.100 Participation and submission requirements.
93.101 Distribution of assistance.

Subpart D—Program Requirements

93.150 Site and neighborhood standards.

93.151 Income determinations.

Subpart E—Eligible and Prohibited Activities

93.200 Eligible activities: General.
93.201 Eligible project costs.
93.202 Eligible administrative and planning costs.
93.203 HTF funds and public housing.
93.204 Prohibited activities and fees.

Subpart F—Income Targeting

93.250 Income targeting.

Subpart G—Project Requirements

93.300 Maximum per-unit subsidy amount, underwriting, and subsidy layering.
93.301 Property standards.
93.302 Qualification as affordable housing: rental housing.
93.303 Tenant protections and selection.
93.304 Qualification as affordable housing: homeownership.
93.305 Qualification as affordable housing: modest housing requirements for homeownership; resale or recapture requirements.

Subpart H—Other Federal Requirements

93.350 Other Federal requirements and nondiscrimination; affirmative marketing.
93.351 Lead-based paint.
93.352 Displacement, relocation, and acquisition.
93.353 Conflict of interest.
93.354 Funding Accountability and Transparency Act.
92.355 Eminent domain.

Subpart I—Program Administration

93.400 Housing Trust Fund (HTF) accounts.
93.401 HTF grant agreement.
93.402 Program disbursement and information system.
93.403 Program income and repayments.
93.404 Grantee responsibilities; written agreements; onsite inspections; financial oversight.
93.405 Applicability of uniform administrative requirements, cost principles, and audits.
93.406 Audits.
93.407 Recordkeeping.
93.408 Performance reports.

Subpart J—Performance Reviews and Sanctions

93.450 Accountability of recipients.
93.451 Performance reviews.
93.452 Corrective and remedial actions.
93.453 Notice and opportunity for hearing; sanctions.

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

Subpart A—General

§ 93.1 Overview.

(a) This part implements the Housing Trust Fund (HTF) program established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*) (the Act). In general, under the HTF program, HUD allocates funds by formula to eligible States to increase and preserve the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing for extremely low-income and very low-income households, including homeless families.

(b) Section 1337 of the Act requires a percentage of the unpaid principal balance of total new business for the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) (collectively, the government-sponsored enterprises or GSEs) to be setaside and allocated as a dedicated source of annual funding for the HTF, unless allocations are suspended by the Director of the Federal Housing Finance Agency, the agency that regulates the GSEs. These funds will be deposited into an HTF account established in the Treasury of the United States by the Secretary of the Treasury to carry out the HTF program. The Act also provides that the HTF may be funded with amounts appropriated, transferred, or credited to the HTF under other provisions of law.

§ 93.2 Definitions.

1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq*).

Annual income. See § 93.151.

Commitment means:

(1) The grantee has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with an eligible recipient for a project that meets the definition of ''commit to a specific local project'' of paragraph (2) of this definition.

(2) ''Commit to a specific local project'' means:

(i) If the project consists of rehabilitation or new construction (with or without acquisition), the grantee and recipient have executed a written legally binding agreement under which HTF assistance will be provided to the recipient for an identifiable project for which construction can reasonably be expected to start within 12 months of the agreement date. The written agreement for rehabilitation or new construction of rental housing may also provide operating cost assistance and/or operating cost assistance reserves.

(ii) If the project consists of acquisition of standard housing and the grantee is providing HTF funds to a recipient to acquire rental housing, or to a first-time homebuyer family to acquire single family housing for homeownership, the grantee and recipient or the family have executed a written agreement under which HTF assistance will be provided for the purchase of the rental housing or single family housing and the property title will be transferred to the recipient or family within 6 months of the agreement date. The written agreement for acquisition of rental housing may also provide operating cost assistance and/or operating cost assistance reserves.

(iii) If the project is for renewal of operating cost assistance or operating cost assistance reserves, the grantee and the recipient must have executed a legally binding written agreement under which HTF funds will be provided to the recipient for operating cost assistance or operating cost assistance reserves for the identified HTF project.

Consolidated plan means the plan submitted and approved in accordance with 24 CFR part 91.

Displaced homemaker means an individual who:

(1) Is an adult;

(2) Has not worked full-time full-year in the labor force for a number of years, but has, during such years, worked primarily without remuneration to care for the home and family; and

(3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Extremely low-income families means low-income families whose annual incomes do not exceed 30 percent of the median family income of a geographic area, as determined by HUD with adjustments for smaller and larger families.

Family has the same meaning given that term in 24 CFR 5.403.

First-time homebuyer means an individual and his or her spouse who have not owned a home during the 3-year period prior to purchase of a home with assistance under this part. The term first-time homebuyer also includes an individual who is a displaced homemaker or single parent, as those terms are defined in this section.

Grantee means the State or the State-designated entity that receives the HTF funds from HUD.

HTF allocation plan means the annual submission to HUD required by the Act that describes how the grantee will distribute its HTF funds, including how it will use the funds to address its priority housing needs, what activities may be undertaken with those funds, and how recipients and projects will be

selected to receive those funds. See 24 CFR 91.220(l)(4) and 91.320(k)(5).

HTF funds means funds made available under this part through formula allocations and reallocations, plus program income.

Homeownership means ownership in fee simple title in a 1- to 4-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD.

(1) The land may be owned in fee simple or the homeowner may have a 99-year ground lease.

(i) For housing located in the insular areas, the ground lease must be 40 years or more.

(ii) For housing located on Indian trust or restricted Indian lands or a Community Land Trust, the ground lease must be 50 years or more.

(iii) For manufactured housing, the ground lease must be for a period at least equal to the applicable period of affordability in § 93.304(e).

(2) Right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made) is not an equivalent form of ownership.

(3) The ownership interest may be subject only to the restrictions on resale required under § 93.304; mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the grantee; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

(4) The grantee must determine whether or not ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law; however, if the cooperative or mutual housing project receives low income housing tax credits, the ownership or membership does not constitute homeownership.

Household means one or more persons occupying a housing unit.

Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, single-room occupancy housing, and group homes. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).

HUD means the Department of Housing and Urban Development.

Income-eligible means a family, homeowner, or household (as appropriate given the context of the specific regulatory provision) that is very low-income, extremely low-income, or both, depending on the income-targeting requirements set forth in § 93.250.

Insular areas means Guam, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

Neighborhood means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

Poverty line is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902).

Program income means gross income received by the grantee that is directly generated from the use of HTF funds. When program income is generated by housing that is only partially assisted with HTF funds, the income shall be prorated to reflect the percentage of HTF funds used. Program income includes, but is not limited to, the following:

(1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HTF funds;

(2) Gross income from the use or rental of real property owned by the grantee that was acquired, rehabilitated, or constructed with HTF funds, minus costs that were incidental to generation of the income; therefore, program income does not include gross income from the use, rental, or sale of real property received by the recipient, unless the funds are paid by the recipient to the grantee);

(3) Payments of principal and interest on loans made using HTF funds;

(4) Proceeds from the sale of loans made with HTF funds;

(5) Proceeds from the sale of obligations secured by loans made with HTF funds;

(6) Interest earned on program income pending its disposition; and

(7) Any other interest or return on the investment of HTF funds, as permitted under § 93.200(b).

Project means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HTF funds as a single undertaking under this part. The project includes all the activities associated with the site and building.

Project completion means that all necessary title transfer requirements and construction work have been performed, the project complies with the requirements of this part (including the property standards under § 93.301 of this part), the final drawdown has been disbursed for the project, and the project completion information has been entered in the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of § 93.402(d) of this part, project completion occurs upon completion of construction before occupancy.

Recipient means an organization, agency, or other entity (including a public housing agency, or a for-profit entity or a nonprofit entity) that receives HTF assistance from a grantee as an owner or developer to carry out an HTF-assisted project. A recipient must:

(1) Make acceptable assurances to the grantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities;

(2) Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;

(3) Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs; and

(4) Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to:

(i) Own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development; or

(ii) Design, construct, or rehabilitate, and market affordable housing for homeownership.

(iii) Provide forms of assistance, such as down payments, closing costs, or interest rate buydowns for purchasers.

Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment, except that housing that was destroyed may be rebuilt on the same lot if HTF funds are committed within 12 months of the date of destruction. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes

replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is new construction for purposes of this part.

Shortage of standard rental units both affordable and available to extremely low-income renter households means

(1) For any State or other geographical area the gap between:

(i) The number of units with complete plumbing and kitchen facilities with a rent that does not exceed 30 percent of 30 percent of the adjusted area median income (AMI) as determined by HUD that either are occupied by extremely low-income renter households or are vacant for rent; and

(ii) The number of extremely low-income renter households.

(2) If the number of units described in paragraph (1)(i) of this definition exceeds the number of extremely low-income households described in paragraph (1)(ii) of this definition, there is no shortage.

Single family housing means a one-to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.

Single parent means an individual who:

(1) Is unmarried or legally separated from a spouse; and

(2) Has one or more minor children of whom the individual has custody or joint custody, or is pregnant.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

State-designated entity means a State housing finance agency, tribally designated housing entity, or any other qualified instrumentality of the State that is designated by the State to be the grantee.

Subgrantee means a unit of general local government or State agency selected by the grantee to administer all or a portion of its HTF program. A local government subgrantee must have an approved consolidated plan submitted in accordance with 24 CFR part 91. The selection of a subgrantee by a grantee is not subject to the procurement procedures and requirements.

Tribally designated housing entity has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103).

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HTF program.

Urban county has the meaning given the term in 24 CFR 570.3.

Very low-income renter households means a household whose income is in excess of 30 percent but not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

Very low-income families means low-income families whose annual incomes are in excess of 30 percent but not greater than 50 percent of the median family income of a geographic area, as determined by HUD with adjustments for smaller and larger families. ''Very low-income family'' also includes any family that resides in a nonmetropolitan area that does not exceed the poverty line applicable to the family size involved.

§ 93.3 Waivers.

HUD may, upon a determination of good cause and subject to statutory limitations, waive any provision of this part and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

Subpart B—Allocation Formula; Reallocations

§ 93.50 Formula allocation.

(a) *Allocations to States.* HUD will provide to the States allocations of funds in amounts determined by the formula described in this part.

(b) *Amount available for allocation.* The amount of funds available for allocation by the formula is the balance remaining after providing for other purposes authorized by Congress, in accordance with the Act and appropriations.

(c) *Allocations for the insular areas.* The allocation amount for each insular area is determined by multiplying the funds available times the ratio of renter households in each insular area to the total number of renter households in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the insular areas.

(d) *Allocations for the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia*—(1) *Amounts available for allocations.* The amount of funds that is available for allocation by the formula to the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia is determined using the most current data available from the U.S. Census Bureau that is available for the same year for all these geographic areas. The amount is equal to the balance of funds remaining after determining formula allocations for the insular areas under § 93.50(c). For purposes of paragraphs (d)(1) and (2) of this section, the term ''State'' means any of the 50 United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(2) *Allocations.* (i) Allocations to the States are determined using the four needs factors described in § 93.51(a) through (d), multiplying each factor by the amount available under § 93.51(d)(1) by its priority weight, and summing the four factors for each State.

(ii) The factor described in § 93.51(a) is weighted 0.5. The factors described in § 93.51(b) and (d) are weighted at 0.125 and the factor described in § 93.51(c) of this section is weighted at 0.25.

(iii) The sum of the four needs factors for each State is then multiplied by the construction cost factor described in § 93.51(e) of this section and by the total amount of funds available for State allocations.

§ 93.51 Formula factors.

(a) *Need factor one.* The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

(b) *Need factor two.* The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

(c) *Need factor three.* The ratio of:

(1) Extremely low-income renter households in the State living with either incomplete kitchen or plumbing facilities, more than one person per room, or paying more than 50 percent of income for housing costs, to

(2) The aggregate number of extremely low-income renter households living with either incomplete kitchen or plumbing facilities, more than one person per room, or paying more than 50 percent of income for housing costs in all the States.

(d) *Need factor four.* The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate

number of very low-income renter households paying more than 50 percent of income on rent in all the States.

(e) *Construction cost factor.* The resulting sum calculated from the factors described in paragraphs (a) through (d) of this section shall be multiplied by the relative cost of construction in the state. For purposes of calculating this factor, the term ''cost of construction'':

(1) Means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

(2) Is calculated so that values higher than 1.0 indicate that the State's construction costs are higher than the national average, a value of 1.0 indicates that the State's construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State's cost of construction are lower than the national average.

§ 93.52 Minimum allocations.

(a) In accordance with the HTF statute, HUD is required to provide each of the States and the District of Columbia with a minimum grant of $3 million. If the formula amount determined for a fiscal year is less than $3 million to any of the 50 States or the District of Columbia, then the allocation to that State or the District of Columbia is increased to $3 million, and allocations to States and the District of Columbia above $3 million and to the Commonwealth of Puerto Rico and the insular areas are adjusted by an equal amount on a pro rata basis.

(b) If in any fiscal year, funding in the HTF is insufficient to provide each of the 50 States and the District of Columbia with a minimum grant of $3 million, HUD will, through notice published in the **Federal Register** for public comment, describe an alternative method for allocating grant funds to the 50 States and the District of Columbia.

§ 93.53 Federal Register notice of formula allocations.

Not later than 60 calendar days after the date that HUD determines the formula amounts under this subpart, HUD will publish a notice in the **Federal Register** announcing the availability of the allocations to States.

§ 93.54 Reallocations by formula.

(a) HUD will reallocate under this section:

(1) Any HTF funds available for reallocation because HUD reduced or recaptured funds from an HTF grantee under § 93.400(d) for failure to commit or expend the funds within the time specified, or under § 93.453 for failure to comply substantially with any provision of this part;

(2) Any HTF funds reduced for failure by the grantee to obtain funds required to be reimbursed or returned under § 93.450; and

(3) Any HTF funds remitted to HUD under § 93.403(b)(4) when a grantee ceases to be an HTF grantee for any reason.

(b) Any reallocation of funds must be made only among all participating States, except those States from which the funds were recaptured or reduced.

(c) Any amounts that become available for reallocation shall be added to amounts for formula allocation in the succeeding fiscal year.

Subpart C—Participation and Submission Requirements; Distribution of Assistance

§ 93.100 Participation and submission requirements.

(a) *Notification of intent to participate.* Not later than 30 calendar days after HUD's publication of the formula allocation amounts as provided in § 93.53, the State must notify HUD in writing of its intention to become an HTF grantee for the first year of HTF funding.

(b) *Submission requirement.* To receive its HTF grant, the grantee must submit a consolidated plan in accordance with 24 CFR part 91.

§ 93.101 Distribution of assistance.

(a) A State may choose to be the HTF grantee to receive and administer its grant or it may choose a qualified State-designated entity to be the HTF grantee.

(b) Each grantee is responsible for distributing HTF funds throughout the State according to the State's assessment of the priority housing needs within the State, as identified in the State's approved consolidated plan.

(c) An HTF grantee may choose to directly fund projects by eligible recipients in accordance with the State's HTF allocation plan or to fund projects by eligible recipients through one or more subgrantees. An HTF subgrantee that is a unit of general local government must have a consolidated plan under 24 CFR part 91, and must include an HTF allocation plan in its consolidated plan (see 24 CFR 91.220(l)(4)), and must select projects by eligible recipients in accordance with its HTF allocation plan. Because a State has only one consolidated plan, and HTF allocation plan for an HTF subgrantee that is a State agency must be included in the State's HTF allocation plan. The grantee or subgrantee must determine that the applicant is an eligible recipient that meets the definition of ''recipient'' in § 93.2 before awarding HTF assistance.

(d) If the HTF grantee subgrants HTF funds to subgrantees, the grantee must ensure that its subgrantees comply with the requirements of this part and carry out the responsibilities of the grantee. The grantee must annually review the performance of subgrantees in accordance with 24 CFR 93.404(a).

Subpart D—Program Requirements

§ 93.150 Site and neighborhood standards.

(a) *General.* A grantee must administer its HTF program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601 *et seq.,* E.O. 11063, 3 CFR, 1959–1963 Comp., p. 652) and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities.

(b) *New rental housing.* In carrying out the site and neighborhood requirements with respect to new construction of rental housing, a grantee is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR 983.57(e)(2).

§ 93.151 Income determinations.

(a) *General.* The HTF program has income-targeting requirements. Therefore, the grantee must determine that each family occupying an HTF-assisted unit is income-eligible by determining the family's annual income.

(b) *Definition of ''annual income.''* (1) When determining whether a family is income-eligible, the grantee must use one of the following two definitions of ''annual income'':

(i) ''*Annual income*'' as defined at 24 CFR 5.609; or

(ii) ''*Adjusted gross income*'' as defined for purposes of reporting under the Internal Revenue Service (IRS) Form 1040 series for individual federal annual income tax purposes.

(2) The grantee may use only one definition for each HTF-assisted program (*e.g.,* down payment assistance program) that it administers and for each rental housing project.

(c) *Determining annual income*—(1) *Tenants in HTF-assisted housing.* For families who are tenants in HTF-assisted housing, the grantee must initially determine annual income using the method in paragraph (d)(1) of this

section. For subsequent income determinations during the period of affordability, the grantee may use any one of the methods described in paragraph (d) of this section, in accordance with § 93.302(e).

(2) *HTF-assisted homebuyers.* For families who are HTF-assisted homebuyers, the grantee must determine annual income using the method described in paragraph (d)(1) of this section.

(d) *Methods of determining annual income.* (1) Examine at least 2 months of source documents evidencing annual income (*e.g.,* wage statement, interest statement, unemployment compensation statement) for the family.

(2) Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

(3) Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

Subpart E—Eligible and Prohibited Activities

§ 93.200 Eligible activities: General.

(a)(1) HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; for operating costs of HTF-assisted rental housing; and for reasonable administrative and planning costs. Not more than one third of each annual grant may be used for operating cost assistance and operating cost assistance reserves. Operating cost assistance and operating cost assistance reserves may be provided only to rental housing acquired, rehabilitated, reconstructed, or newly constructed with HTF funds. Not more than 10 percent of the annual grant shall be used for housing for homeownership. HTF-assisted housing must be permanent housing. The specific eligible costs for these activities are found in §§ 93.201 and 93.202. The activities and costs are eligible only if the housing meets the property standards in § 93.301, as applicable, upon project completion.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing within the time frames established in the definition of ''commitment'' in § 93.2.

(3) HTF funds may be used to purchase and/or rehabilitate a manufactured housing unit, and purchase the land upon which a manufactured housing unit is located. The manufactured housing unit must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

(b) *Forms of assistance to projects.* A grantee may provide HTF funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each grantee has the right to establish the terms of assistance, subject to the requirements of this part.

(c) *Multi-unit projects.* (1) HTF funds may be used to assist in the development of one or more housing units in a multi-unit project. Only the actual HTF eligible development costs of the assisted units may be charged to the HTF program. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the HTF-assisted units can be determined by prorating the total HTF-eligible development costs of the project so that the proportion of the total development costs charged to the HTF program does not exceed the proportion of the HTF-assisted units in the project.

(2) After project completion, the number of units designated as HTF-assisted may be reduced only in accordance with § 93.203, except that in a project consisting of all HTF-assisted units, one unit may be converted to an onsite manager's unit if the grantee determines the conversion is reasonable and that, based on one fewer HTF-assisted unit, the costs charged to the HTF program do not exceed the actual costs of the HTF-assisted units and do not exceed the subsidy limit established pursuant to § 93.300(a).

(d) *Terminated projects.* An HTF-assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and the grantee must repay any HTF funds invested in the project to its HTF account from which the funds were drawn (*i.e.,* local or Treasury account), in accordance with § 93.403(b). A project that does not meet the requirements for affordable housing must be terminated and the grantee must repay the HTF funds to the grantee's HTF account.

§ 93.201 Eligible project costs.

HTF funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction projects, costs to meet the new construction standards of the grantee in § 93.301;

(2) For rehabilitation, costs to meet the property standards for rehabilitation projects in § 93.301(b);

(3) For both new construction and rehabilitation projects, costs:

(i) To demolish existing structures;

(ii) To make utility connections including off-site connections from the property line to the adjacent street; and

(iii) To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include onsite roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.

(4) For both new construction and rehabilitation of multifamily rental housing projects, costs to construct or rehabilitate laundry and community facilities that are located within the same building as the housing and which are for the use of the project residents and their guests.

(5) Costs to make utility connections or to make improvements to the project site, in accordance with the provisions of paragraphs (a)(3)(ii) and (iii) of this section are also eligible in connection

with the acquisition of standard housing.

(b) *Refinancing costs.* (1) The cost to refinance existing debt secured by rental housing units that are being rehabilitated with HTF funds, but only if the refinancing is necessary to reduce the overall housing costs and to make the housing more affordable and proportional to the number of HTF-assisted units in the rental project. The proportional rehabilitation cost must be greater than the proportional amount of debt that is refinanced.

(2) The grantee must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. The guidelines shall describe the conditions under which the grantee will refinance existing debt. At minimum, the guidelines must demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.

(c) *Acquisition costs.* Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.

(d) *Related soft costs.* Other reasonable and necessary costs incurred by the owner or grantee and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HTF funds. These costs include, but are not limited to:

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups. The costs may be paid if they were incurred not more than 24 months before the date that HTF funds are committed to the project and the grantee expressly permits HTF funds to be used to pay the costs in the written agreement committing the funds.

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent cost estimate, and builders' or developers' fees.

(3) Costs of a project audit, including certification of costs performed by a certified public accountant, that the grantee may require with respect to the development of the project.

(4) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by § 93.350.

(5) For new construction or rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt service. Any HTF funds placed in an operating deficit reserve that remain unexpended after the period of project rent-up may be retained for project reserves if permitted by the grantee.

(6) Staff and overhead costs of the grantee directly related to carrying out the project, such as work specifications preparation, loan processing, and inspections. For multi-unit projects, such costs must be allocated among HTF-assisted units in a reasonable manner and documented. Although these costs may be charged as project costs, these costs cannot be charged to or paid by the assisted families.

(7) For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(e) *Operating cost assistance and operating cost assistance reserves.* For HTF-assisted units for which project-based assistance is not available, when necessary and subject to the limitations in § 93.200(a), HTF funds may be used to pay for operating cost assistance and operating cost assistance reserves, as follows:

(1) Operating costs are costs for insurance, utilities, real property taxes, and maintenance and scheduled payments to a reserve for replacement of major systems (provided that the payments must be based on the useful life of each major system and expected replacement cost) of an HTF-assisted unit. The eligible amount of HTF funds per unit for operating cost assistance is determined based on the deficit remaining after the monthly rent payment for the HTF-assisted unit is applied to the HTF-assisted unit's share of monthly operating costs. The maximum amount of the operating cost assistance to be provided to an HTF-assisted rental project must be based on the underwriting of the project and must be specified in a written agreement between the grantee and the recipient. The written agreement may commit, from a fiscal year HTF grant, funds for operating cost assistance for a multiyear period provided that the grantee is able meet its expenditure deadline in § 93.400(d). The grantee may renew operating cost assistance with future fiscal year HTF grants during the affordability period and the amount must be based on the need for the operating cost assistance at the time the assistance is renewed.

(2) An operating cost assistance reserve may be funded by the grantee for HTF-assisted units in a project where the grantee determines in its underwriting of the project the reserve is necessary to ensure the project's financial feasibility. If the operating cost assistance reserve is funded with appropriated HTF funds, the allowable amount of the reserve shall not exceed the amount determined by the grantee to be necessary to provide operating cost assistance for HTF-assisted units, for a period not to exceed 5 years, based on an analysis of potential deficits remaining after the expected rent payments for the HTF-assisted unit are applied to the HTF-assisted unit's expected share of operating costs. The grantee may renew operating cost assistance reserves with future fiscal year HTF grants during the affordability period and the amount must be based on the need for the operating cost assistance reserve at the time the assistance for the reserve is renewed. If the operating cost assistance reserve is funded with non-appropriated HTF funds, the reserve may be funded for the period of affordability.

(f) *Relocation costs.* The cost of relocation payments and other relocation assistance to persons displaced by the project are eligible costs.

(1) Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.

(2) Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

(g) *Costs relating to payment of loans.* If the HTF funds are not used to directly pay a cost specified in this section, but are used to pay off a construction loan, bridge financing loan, or guaranteed loan, the payment of principal and interest for such loan is an eligible cost only if:

(1) The loan was used for eligible costs specified in this section, and

(2) The HTF assistance is part of the original financing for the project and the project meets the requirements of this part.

(h) *Construction undertaken before the HTF funds are committed to the*

project. HTF funds cannot be used for development hard costs, as provided in paragraph (a) of this section, or for acquisition, undertaken before the HTF funds are committed to the project. However, the written agreement committing the HTF funds to the project may authorize HTF funds to be used for architectural and engineering costs and other related professional services, as provided in paragraph (d)(1) of this section.

§ 93.202 Eligible administrative and planning costs.

(a) *General.* A HTF grantee may expend, for payment of reasonable administrative and planning costs of the HTF, an amount of HTF funds that is not more than 10 percent of the sum of each fiscal year HTF grant and of program income deposited into its local account or received and reported by its subgrantees during the program year. A HTF grantee may expend the funds directly or may authorize its subgrantees, if any, to expend all or a portion of such funds, provided total expenditures for planning and administrative costs do not exceed the maximum allowable amount. Reasonable administrative and planning costs are those costs described in paragraphs (b) through (h) of this section:

(b) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the grantee's staff. In charging costs to this category the grantee may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The grantee may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving HTF funds;

(iii) Monitoring HTF-assisted housing for progress and compliance with program requirements;

(iv) Preparing reports and other documents related to the program for submission to HUD;

(v) Coordinating the resolution of audit and monitoring findings;

(vi) Evaluating program results against stated objectives; and

(vii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (a)(1)(i) through (vi) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services;

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space; and

(c) *Staff and overhead.* Staff and overhead costs of the grantee directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, lead-based paint evaluations (visual assessments, inspections, and risk assessments), other services related to assisting potential owners, tenants and homebuyers (*e.g.,* housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs (except homeownership counseling) may be charged as administrative costs or as project costs under § 93.201(d)(6) and (f)(2), at the discretion of the grantee; however, these costs (except homeownership counseling) cannot be charged to or paid by the low-income families.

(d) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HTF funds.

(e) *Fair housing.* Activities to affirmatively further fair housing in accordance with the grantee's certification under 24 CFR part 91.

(f) *Indirect costs.* Indirect costs may be charged to the HTF program in accordance with 2 CFR part 200, subpart E.

(g) *Preparation of the consolidated plan.* Preparation of the consolidated plan required under 24 CFR part 91. Preparation includes the costs of public hearings, consultations, and publication.

(h) *Other Federal requirements.* Costs of complying with the Federal requirements in subpart H of this part.

§ 93.203 HTF funds and public housing.

(a) HTF funds may be used for new construction or rehabilitation of public housing units only in accordance with the following:

(1) HTF funds may be used for new construction of public housing as part of the Choice Neighborhoods (Choice) program under a HUD appropriation act or for new public housing units that have been allocated and will receive low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

(2) HTF funds may be used for the rehabilitation of existing public housing units in which the public housing assistance will be converted and used at the properties under the Rental Assistance Demonstration (RAD) program under HUD's 2012 Appropriations Act (Pub. L. 112–55, 125 Stat. 552, approved November 18, 2011) or subsequent statutes. HTF funds may also be used for the rehabilitation of existing public housing under the Choice program, and of existing public housing units that have been allocated and will receive low-income housing tax credits under section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

(b) The public housing units constructed using funds under this part must replace units that were removed from a public housing agency's public housing inventory as part of a Choice program grant, or as part of a mixed-financed development under section 35 of the 1937 Act. The number of replacement units cannot be more than the number of units removed from the public housing agency's inventory. The public housing units constructed or rehabilitated using funds under this part must receive Public Housing Operating Fund assistance (and may receive Public Housing Capital Fund assistance) under section 9 of the 1937 Act. These units cannot receive operating costs assistance or operating cost assistance reserves under this part.

(c) Except as provided in paragraph (b) of this section, HTF-assisted housing may not receive Operating Fund or Capital Fund assistance under section 9 of the 1937 Act during the HTF period of affordability.

(d) Consistent with § 93.200(c), HTF funds may be used for affordable housing in a project that also contains public housing units, provided that the HTF funds are not used for the public housing units and HTF funds are used only for eligible costs, in accordance with this part.

§ 93.204 Prohibited activities and fees.

(a) HTF funds may not be used to:

(1) Provide assistance (other than assistance to a homebuyer to acquire housing previously assisted with HTF funds or renewal of operating cost assistance or renewal of operating cost assistance reserve) to a project previously assisted with HTF funds during the period of affordability established by the grantee in the written agreement under § 93.404 (c)(2)(iv). However, additional HTF funds may be committed to a project up to one year after project completion, but the amount of HTF funds in the project may not exceed the maximum per-unit development subsidy amount established pursuant to § 93.300.

(2) Pay for the acquisition of property owned by the grantee, except for property acquired by the grantee with HTF funds or property acquired in anticipation of carrying out an HTF project.

(3) Pay delinquent taxes, fees, or charges on properties to be assisted with HTF funds.

(4) Pay for political activities, advocacy, lobbying (whether directly or through other parties), counseling services (except for housing counseling), travel expenses (other than those eligible under § 93.202(b)), or preparing or providing advice on tax returns. The prohibited use of funds for political activities includes influencing the selection, nomination, election, or appointment of one or more candidates to any Federal, State, or local office as codified in section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501).

(5) Pay for administrative, outreach, or other costs to manage and operate the grantee of HTF funds, except those administrative costs necessary to carry out the HTF program in § 93.202, including housing counseling.

(6) Pay for any cost that is not eligible under § 93.201 and § 93.202.

(b)(1) The grantee may not charge (and must prohibit subgrantees and recipients from charging) servicing, origination, or other fees for the costs of administering the HTF program. However, the grantee may charge owners of rental projects reasonable annual fees for monitoring compliance during the period of affordability. The fees must be based upon the average actual cost of performing the monitoring of HTF-assisted rental projects. The basis for determining the amount of the fee must be documented and the fee must be included in the costs of the project as part of the project underwriting.

(2) The grantee may also charge nominal application fees (although these fees are not an eligible HTF cost) to eligible recipients, to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to an extremely low-income family to be able to participate in the grantee's program.

(3) All fees are applicable credits under 2 CFR part 200, subpart E.

(4) In addition, the grantee must prohibit project owners from charging fees that are not customarily charged in rental housing (*e.g.,* laundry room access fees), except that rental project owners may charge:

(i) Reasonable application fees to prospective tenants;

(ii) Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and

(iii) Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

Subpart F—Income Targeting

§ 93.250 Income targeting.

(a) In any fiscal year in which the total amount available for allocation of HTF funds is less than $1 billion, the grantee must use 100 percent of its HTF grant for the benefit of extremely low-income families or families with incomes at or below the poverty line (whichever is greater). In any fiscal year in which the total amount available for allocation of HTF funds is greater than $1 billion, the grantee must use at least 75 percent of its grant for the benefit of extremely low-income families or families with incomes at or below the poverty line.

(b) Any grant funds not used in accordance with paragraph (a) of this section must be used for the benefit of very-low income families.

Subpart G—Project Requirements

§ 93.300 Maximum per-unit development subsidy amount, underwriting, and subsidy layering.

(a) *Maximum per-unit development subsidy amount.* The grantee must establish maximum limitations on the total amount of HTF funds that the grantee may invest per-unit for development of non-luxury housing, with adjustments for the number of bedrooms and the geographic location of the project. These limits must be reasonable and based on actual costs of developing non-luxury housing in the area. The grantee must include these limits in its consolidated plan and update these limits annually.

(b) *Underwriting and subsidy layering.* Before committing funds to a project, the grantee must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit or return on recipient's investment in a project and must not invest any more HTF funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at minimum, the period of affordability in § 93.302 or § 93.304) and that will not provide a profit or return on the recipient's investment that exceeds the grantee's established standards for the size, type, and complexity of the project. The guidelines adopted by the grantees must require the grantee to undertake:

(1) An examination of the sources and uses of funds for the project (including any operating cost assistance, operating cost assistance reserve, or project-based rental assistance that will be provided to the project) and a determination that the costs are reasonable; and

(2) An assessment, at minimum, of the current market demand in the neighborhood in which the project will be located, the experience of the recipient, the financial capacity of the recipient, and firm written financial commitments for the project.

(3) For HTF-funded downpayment assistance, a market analysis is not required.

§ 93.301 Property standards.

(a) *New construction projects.* (1) State and local codes, ordinances, and zoning requirements. Housing that is newly constructed with HTF funds must meet all applicable State and local codes, ordinances, and zoning requirements. HTF-assisted new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.

(2) *HUD requirements.* All new construction projects must also meet the requirements described in paragraphs (a)(2)(i) through (v) of this section:

(i) *Accessibility.* The housing must meet the accessibility requirements of 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131–12189) implemented at 28 CFR parts 35 and 36, as applicable. ''Covered multifamily dwellings,'' as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619).

(ii) *Energy efficiency.* The housing must meet the energy efficiency standards established pursuant to section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709).

(iii) *Disaster mitigation.* Where relevant, the housing must be constructed to mitigate the impact of potential disasters (*e.g.,* earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

(iv) *Written cost estimates, construction contracts, and construction documents.* The grantee must ensure the construction contract(s) and construction documents describe the work to be undertaken in adequate detail so that inspections can be conducted. The grantee must review and approve written cost estimates for construction and determine that costs are reasonable.

(v) *Construction progress inspections.* The grantee must conduct progress and final inspections of construction to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.

(b) *Rehabilitation projects.* All rehabilitation that is performed using HTF funds must meet the requirements of this paragraph (b).

(1) *Rehabilitation standards.* The grantee must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The grantee's description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. The rehabilitation standards must address each of the following:

(i) *Health and safety.* The grantee's standards must identify life-threatening deficiencies that must be addressed immediately if the housing is occupied.

(ii) *Major systems.* Major systems are: structural support; roofing; cladding and weatherproofing (*e.g.,* windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For rental housing, the grantee's standards must require the grantee to estimate (based on age and condition) the remaining useful life of these systems, upon project completion of each major system. For multifamily housing projects of 26 units or more, the grantee's standards must require the grantee to determine the useful life of major systems through a capital needs assessment of the project. For rental housing, if the remaining useful life of one or more major system is less than the applicable period of affordability, the grantee's standards must require the grantee to ensure that a replacement reserve is established and monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. For homeownership housing, the grantee's standards must require, upon project completion, each of the major systems to have a remaining useful life for a minimum of 5 years or for such longer period specified by grantee, or the major systems must be rehabilitated or replaced as part of the rehabilitation work.

(iii) *Lead-based paint.* The grantee's standards must require the housing to meet the lead-based paint requirements at 24 CFR part 35.

(iv) *Accessibility.* The grantee's standards must require the housing to meet the accessibility requirements in 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131–12189) implemented at 28 CFR parts 35 and 36, as applicable. ''Covered multifamily dwellings,'' as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.

(v) [Reserved].

(vi) *Disaster mitigation.* Where relevant, the grantee's standards must require the housing to be improved to mitigate the impact of potential disasters (*e.g.,* earthquake, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements, or such other requirements as HUD may establish.

(vii) *State and local codes, ordinances, and zoning requirements.* The grantee's standards must require the housing to meet all applicable State and local codes, ordinances, and requirements or, in the absence of a State or local building code, the International Existing Building Code of the International Code Council.

(viii) *Uniform Physical Condition Standards.* The standards of the grantee must be such that, upon completion, the HTF-assisted project and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the grantee's rehabilitation standards based on inspectable items and inspected areas from HUD-prescribed physical inspection procedures (Uniform Physical Conditions Standards) pursuant to 24 CFR 5.705.

(ix) *Capital Needs Assessments.* For multifamily rental housing projects of 26 or more total units, the grantee must determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment of the project.

(2) *Construction documents and cost estimates.* The grantee must ensure that the work to be undertaken will meet the grantee's rehabilitation standards. The construction documents (*i.e.,* written scope of work to be performed) must be in sufficient detail to establish the basis for a uniform inspection of the housing to determine compliance with the grantee's standards. The grantee must review and approve a written cost estimate for rehabilitation after determining that costs are reasonable.

(3) *Frequency of inspections.* The grantee must conduct an initial property inspection to identify the deficiencies that must be addressed. The grantee must conduct progress and final inspections to determine that work was done in accordance with work write-ups.

(c) *Acquisition of standard housing.* (1) Existing housing that is acquired with HTF assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HTF funds, must meet the property standards of paragraph (a) or paragraph (b) of this section, as applicable, for new construction and rehabilitation projects. The grantee must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance.

(2) All other existing housing that is acquired with HTF assistance for rental housing must meet the rehabilitation property standards requirements of paragraph (b) of this section. The grantee must document this compliance based upon an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance. If the property does not meet these standards, HTF funds cannot be used to acquire the property unless it is rehabilitated to meet the standards of paragraph (b) of this section.

(3) Existing housing that is acquired for homeownership (*e.g.,* downpayment assistance) must be decent, safe, sanitary, and in good repair. The grantee must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (Uniform Physical Condition Standards) issued pursuant to 24 CFR 5.705. The grantee must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be assisted with HTF funds.

(d) *Manufactured housing.* Construction of all manufactured housing (including manufactured housing that replaces an existing substandard unit under the definition of ''reconstruction'') must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes which are not identical to the Federal standards for the new construction of manufactured housing. The grantees providing HTF funds to assist manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of ''reconstruction'' must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing (and all manufactured housing that replaces an existing substandard unit under the definition of ''reconstruction'') must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability. In HTF-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or State codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285. Manufactured housing that is rehabilitated using HTF funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The grantee must document this compliance in accordance with inspection procedures that the grantee has established pursuant to § 92.301, as applicable.

(e) *Ongoing property condition standards: Rental housing*—(1) *Ongoing property standards.* The grantee must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period. The standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair. The grantee's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HTF rental projects. The grantee's ongoing property standards must address each of the following:

(i) At a minimum, the grantee's ongoing property standards must include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (Uniform Physical Condition Standards (UPCS)) prescribed by HUD pursuant to 24 CFR 5.705.

(ii) *Health and safety.* The grantee's standards must require the housing to be free of all health and safety defects. The standards must identify life-threatening deficiencies that the owner must immediately correct and the time frames for addressing these deficiencies.

(iii) *Lead-based paint.* The grantee's standards must require the housing to meet the lead-based paint requirements in 24 CFR part 35.

(2) *Inspections.* The grantee must undertake ongoing property inspections, in accordance with § 93.404.

(3) *Corrective and remedial actions.* The grantee must have procedures for ensuring that timely corrective and remedial actions are taken by the project owner to address identified deficiencies.

(4) *Inspection procedures.* The grantee must establish written inspection procedures. The procedures must include detailed inspection checklists, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors. The procedures must also describe how frequently the property will be inspected, consistent with section § 93.404(d).

(f) *Environmental provisions*—(1) *New construction projects environmental requirements*—(i) *Historic preservation*—(A) *Standards.* The project activities (including demolition) must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places, unless the project activities meet the *Secretary of the Interior's Standards for Rehabilitation,* either as certified through the Federal and/or State historic rehabilitation tax credit programs or as verified by someone that meets the relevant *Secretary of the Interior's Professional Qualification Standards;*

(B) *Archaeological resources.* If archaeological resources or human remains are discovered on the project site during construction, the grantee must consult with affected tribes and/or descendant communities and comply with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013), State law and/or local ordinance (*e.g.,* State unmarked burial law).

(ii) *Farmland.* Project activities must not result in the conversion of unique, prime, or statewide or locally significant agricultural properties to urban uses.

(iii) *Airport zones.* Projects are not permitted within the runway protection zones of civilian airports, or the clear zones or accident potential zones of military airfields.

(iv) *Coastal Barrier Resource System.* No projects may be assisted in Coastal Barrier Resource System (CBRS) units. CBRS units are mapped and available from the U.S. Fish and Wildlife Service.

(v) *Coastal zone management.* Development must be consistent with the appropriate State coastal zone management plan. Plans are available from the local coastal zone management agency.

(vi) *Floodplains.* Except as modified below, definitions for terms used below can be found at 24 CFR part 55.

(A) Construction and other activities in the 100-year floodplain are to be avoided when practicable. If there are no practicable alternatives to new

construction or substantial improvement in the 100-year floodplain, the structure must be elevated at least the base flood elevation (BFE) or floodproofed to one foot above the BFE. Elevated and floodproofed buildings must adhere to National Flood Insurance Program standards. The primary sources of floodplain data are Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs). When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps or studies, the latest of these sources shall be used.

(B) No HTF assistance may be approved with respect to:

(*1*) Any action, other than a functionally dependent use, located in a floodway;

(*2*) Any new construction critical action located in a coastal high hazard area, 100- or 500-year floodplain; or

(*3*) Any non-critical new construction action in a coastal high hazard area, unless the action is reconstruction following destruction caused by a disaster and is designed for location in a coastal high hazard area consistent with the FEMA National Flood Insurance Program requirements for V-Zones.

(vii) *Wetlands.* (A) No draining, dredging, channelizing, filling, diking, impounding, or related grading activities are to be performed in wetlands. No activities, structures, or facilities funded under this program are to adversely impact a wetland.

(B) A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities, such as the construction of structural flood protection methods or solid-fill road beds, or mineral extraction and navigation improvements. This definition is independent of the definition of jurisdictional wetland used by the U. S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

(viii) *Explosives and hazards.* Projects must be in compliance with the standards for acceptable separation distance, as set forth at 24 CFR part 51, subpart C.

(ix) *Contamination.* All properties assisted with HTF funds must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended use of the property.

(A) All proposed multifamily (more than four housing units) HTF projects require a Phase I Environmental Site Assessment (ESA–ASTM). If the Phase I ESA identifies recognized environmental concerns (RECs), a Phase II (ESA–ASTM) will be required. ASTM reports shall be prepared in accordance with the most current ASTM standard. Single family housing does not require a Phase I ESA.

(B) HTF projects must avoid sites located within 0.25 miles of a Superfund or CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System) site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from the U.S. Environmental Protection Agency (EPA) or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended use of the property.

(x) *Noise.* (A) Internal noise levels: All activities will be developed to ensure an interior noise level of no more than 45 decibels (dB).

(B) External noise levels:

(*1*) Project sites exposed to less than or equal to 65 dB of environmental noise are acceptable.

(*2*) Sites between 65 dB and less than 75 dB are acceptable with mitigation (*e.g.,* noise walls, careful site planning) that result in an interior standard of 45 dB.

(*3*) Locations with environmental noise levels of 75 dB or greater may not have noise sensitive outdoor uses (*e.g.,* picnic areas, tot lots, balconies, or patios) and *require* sound attenuation in the building shell to achieve the 45 dB interior standard.

(xi) *Endangered species.* The grantee must avoid all actions which could jeopardize the continued existence of any endangered or threatened species, as designated by the U.S. Fish and Wildlife Service or National Marine Fisheries Service, or would result in the destruction or adversely modify the designated critical habitat of such species.

(xii) *Wild and scenic rivers.* The grantee must avoid activities that are inconsistent with conservation easements, land-use protections, and restrictions adjacent to wild and scenic rivers, as designated/listed by the Departments of Agriculture or Interior. Maps for the National Wild and Scenic Rivers System are available at the governing departments.

(xiii) *Safe drinking water.* Projects with a potable water system must use only lead-free pipes, solder, and flux.

(xiv) *Sole-source aquifers.* Project activities should avoid sites and activities that have the potential to contaminate sole source aquifer areas (SSAs). EPA defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. If the project overlies an SSA, EPA must review the project. EPA review is designed to reduce the risk of ground water contamination that could pose a health hazard to those who use it.

(2) *Rehabilitation projects environmental requirements*—(i) *Historic preservation.* (A) The project activities (including demolition) must not be performed on properties that are either listed in or determined eligible for listing in the National Register of Historic Places, unless the project activities meet the *Secretary of the Interior's Standards for Rehabilitation,* either as certified through the Federal and/or State historic rehabilitation tax credit programs or as verified by someone that meets the relevant *Secretary of the Interior's Professional Qualification Standards;*

(B) *Archaeological resources.* If archaeological resources or human remains are discovered on the project site during construction or rehabilitation, the grantee must consult with affected tribes and/or descendant communities and comply with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013), State law, and/or local ordinance (*e.g.,* State unmarked burial law).

(ii) *Farmland.* Project activities must not result in the conversion of unique, prime, or locally significant agricultural properties to urban uses.

(iii) *Airport zones.* Projects are not permitted within the runway protection zones of civilian airports, or the clear zones or accident potential zones of military airfields.

(iv) *Coastal Barrier Resource System.* No projects may be assisted in Coastal Barrier Resource System (CBRS) units. CBRS units are mapped and available from the U.S. Fish and Wildlife Service.

(v) *Coastal zone management.* Development must be consistent with the appropriate State coastal zone management plan. Plans are available

from the local coastal zone management agency.

(vi) *Floodplains.* Except as modified below, definitions for terms used below can be found at 24 CFR part 55.

(A) Construction and other activities in the 100-year floodplain are to be avoided when practicable. If there are no practicable alternatives to new construction or substantial improvement in the 100-year floodplain, the structure must be elevated at least to the base flood elevation (BFE) or floodproofed to one foot above the BFE. Elevated and floodproofed buildings must adhere to National Flood Insurance Program standards. The primary sources of floodplain data are Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMS). When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps or studies, the latest of these sources shall be used.

(B) No HTF assistance may be approved with respect to:

(*1*) Any action, other than functionally dependent uses, located in a floodway;

(*2*) Any critical action located in a coastal high hazard area, 100- or 500-year floodplain; or

(*3*) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area consistent with the FEMA National Flood Insurance Program requirements for V-Zones. ''Any non-critical action in a coastal high hazard area, unless the action is reconstruction following destruction caused by a disaster and is designed for location in a coastal high hazard area consistent with the FEMA National Flood Insurance Program requirements for V-Zones.''

(vii) *Wetlands.* No rehabilitation of existing properties that expands the footprint into a wetland is allowed. A wetland means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition is independent of the definition of jurisdictional wetland used by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

(viii) *Explosives and hazards.* If the rehabilitation of the building increases the number of dwelling units, then the project must be in compliance with the standards for acceptable separation distance as set forth at 24 CFR part 51, subpart C.

(ix) *Contamination.* All properties assisted with HTF funds must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended use of the property:

(A) All proposed multifamily (more than four housing units) HTF project activities require a Phase I Environmental Site Assessment (ESA—ASTM). If the Phase I ESA identifies recognized environmental concerns (RECs), a Phase II (ESA–ASTM) will be required. ASTM reports shall be prepared in accordance with the most current ASTM standard. Single family housing does not require a Phase I ESA.

(B) HTF projects must avoid sites located within 0.25 miles of a Superfund or CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System) site or other contaminated site reported to Federal, State, or local authorities without a statement in writing from EPA or the appropriate State agency that there is no hazard that could affect the health and safety of the occupants or conflict with the intended utilization of the property.

(x) *Noise*—(A) *Internal noise levels.* All activities will be developed to ensure an interior noise level of no more than45 decibels (dB).

(B) [Reserved].

(xi) *Endangered species.* (A) The grantee must avoid all actions that could jeopardize the continued existence of any species designated by the U.S. Fish and Wildlife Service or National Marine Fisheries Service as endangered or threatened.

(B) The grantee must avoid all actions that adversely modify the critical habitat of such species.

(xii) *Wild and scenic rivers.* The grantee must avoid activities that are inconsistent with conservation easements, land-use protections, and restrictions adjacent to wild and scenic rivers, as designated/listed by the Departments of Agriculture and Interior. Maps for the National Wild and Scenic Rivers System are available at the governing departments.

(xiii) *Safe drinking water.* Projects with a potable water system must use only lead-free pipes, solder, and flux.

(xiv) *Sole-source aquifers.* Project activities should avoid sites and activities that have the potential to contaminate sole source aquifer areas (SSAs). The EPA defines a sole or principal source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. If the project overlies an SSA, the EPA must review the project. The EPA review is designed to reduce the risk of ground water contamination, which could pose a health hazard to those who use it.

(3) *Acquisition projects environmental requirements.* (i)(A) Existing housing that is acquired with HTF funds, and has been newly constructed or rehabilitated less than 12 months before the commitment of HTF funds must meet the property standards at paragraph (f)(1) of this section.

(B) All other existing housing that is acquired with HTF assistance must meet the property standards requirements of paragraph (f)(2) of this section.

(ii) If under paragraph (f)(3)(i)(A) or paragraph (B) of this section, the property does not meet these standards, with the exception of the noise standards in paragraph (f)(2) of this section, HTF funds cannot be used to acquire the property.

(4) *Manufactured housing environmental requirements.* Manufactured housing is subject to the environmental standards in paragraph (f)(1) of this section for new construction or paragraph (f)(2) of this section for rehabilitation, as applicable. If an existing property does not meet these standards, HTF funds cannot be used to acquire the property unless it is rehabilitated to meet the standards in paragraph (f)(2), as applicable, with the exception of noise standards in paragraph (f)(2)(x).

§ 93.302 Qualification as affordable housing: rental housing.

(a) *Eligible tenants.* The HTF-assisted units in a rental housing project must be occupied by households who are eligible families in accordance with the income targeting requirements in § 93.250.

(b) *Rent limitations*—(1)(i) *Extremely low-income tenants.* The HTF rent plus utilities of an extremely low-income tenant shall not exceed the greater of 30 percent of the federal poverty line or 30 percent of the income of a family whose annual income equals 30 percent of the median income for the area, as

determined by HUD, with adjustments for the number of bedrooms in the unit. HUD will publish the HTF rent limits on an annual basis.

(ii) *Very-low income tenants.* The HTF rent plus utilities of a very low-income tenant shall not exceed 30 percent of the income of a family whose annual income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit. HUD will publish the HTF rent limits on an annual basis.

(2) If the unit receives Federal or State project-based rental subsidy, and the tenant pays as a contribution toward rent not more than 30 percent of the tenant's adjusted income, the maximum rent is the rent allowable under the Federal or State project-based rental subsidy program.

(c) *Initial rent schedule and utility allowance.* (1) The grantee must establish maximum monthly allowances for utilities and services (excluding telephone, television, and Internet service).

(2) The grantee must annually review and approve rents proposed by the owner for HTF units. For all units for which the tenant is paying utilities, the grantee must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities.

(d) *Periods of affordability.* (1) HTF-assisted units must meet the affordability requirements for not less than 30 years, beginning after project completion. The grantee may impose longer periods.

(2) The affordability requirements apply without regard to the term of any loan or mortgage, repayment of the HTF investment, or the transfer of ownership. They must be imposed by a deed restriction, covenant running with the land, an agreement restricting the use of the property, or other mechanisms approved by HUD under which the grantee and beneficiaries have the right to require specific performance, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The affordability requirements must be recorded in accordance with State recordation laws.

(3) The grantee may use purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability.

(4) The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(5) The termination of the restrictions on the project does not terminate the grantee's repayment obligation under § 93.403.

(e) *Tenant income.* (1) The income of each tenant must be determined initially in accordance with § 93.151. In addition, in each year during the period of affordability, the project owner must re-examine each tenant's annual income in accordance with one of the options in § 93.151(c) selected by the grantee.

(2) An owner who re-examines a tenant's annual income through a statement and certification in accordance with § 93.151(a)(1)(iii) must examine the source documentation of the income of each tenant every 6th year of the affordability period, except that, for units that receive project-based assistance, the owner must re-examine the tenant's annual income in accordance with the project-based assistance rules. Otherwise, an owner who accepts the tenant's statement and certification in accordance with § 93.151(a)(1)(iii) is not required to examine the income of tenants, unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

(f) *Over-income tenants.* HTF-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(g) *Fixed and floating HTF units.* In a project containing HTF-assisted and other units, the grantee may designate fixed or floating HTF units. This designation must be made at the time of project commitment in the written agreement between the grantee and the recipient, and the HTF units must be identified not later than the time of project completion. Fixed units must remain the same throughout the period of affordability. Floating units must be changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated HTF-assisted unit.

(h) *Tenant selection.* The tenants must be selected in accordance with § 93.303.

(i) *Onsite inspections and financial oversight.* See § 93.404(d) for the grantee's ongoing responsibilities for onsite inspections and financial oversight.

§ 93.303 Tenant protections and selection.

(a) *Lease.* There must be a written lease between the tenant and the owner of rental housing assisted with HTF funds that is for a period of not less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and

(9) *Mandatory supportive services.* Agreement by the tenant to accept supportive services that are offered.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HTF funds, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. Good cause does not include an increase in the tenant's income. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action and providing a specific period for vacating that is consistent with State or local law.

(d) *Tenant selection.* An owner of rental housing assisted with HTF funds must comply with the affirmative marketing requirements established by the grantee pursuant to § 93.350. The owner must adopt and follow written tenant selection policies and criteria that:

(1) Limit the housing to income-eligible families;

(2) Are reasonably related to the applicants' ability to perform the obligations of the lease (*i.e.,* to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);

(3) Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if the limitation or preference is described in the grantee's consolidated plan).

(i) Any limitation or preference must not violate nondiscrimination requirements in § 93.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (*e.g.,* the Housing Opportunity for Persons With AIDS program under 24 CFR part 574), and the limit or preference is tailored to serve that segment of the population.

(ii) If a project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

(A) The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;

(B) Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and

(C) Such services cannot be provided in a nonsegregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

(4) Do not exclude an applicant with a voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program (24 CFR part 92) because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.

(5) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(6) Give prompt written notification to any rejected applicant of the grounds for any rejection.

§ 93.304 Qualification as affordable housing: Homeownership.

(a) *Homeownership activities.* Housing that is for purchase by a first-time homebuyer must meet the affordability requirements of this section.

(b) *Single family housing.* The housing must be single-family housing, as defined at § 93.2.

(c) *Modest housing.* The housing must be modest housing, in accordance with § 93.305.

(d) *First-time homebuyer and income requirements.* The housing must be acquired by a first-time homebuyer whose family qualifies as an income-eligible family in accordance with § 93.251 and the housing must be the principal residence of the family throughout the period described in paragraph (e) of this section. In determining the income eligibility of the family, the grantee must include the income of all persons living in the housing. Before purchasing the housing, the family must have completed a program of independent financial education and homeownership counseling from an eligible organization that has been certified in accordance with section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x (e)).

(e) *Period of affordability.* The HTF-assisted housing must meet the affordability requirements for not less than 30 years.

(f) *Resale or recapture requirements.* The grantee must establish the resale or recapture requirements that comply with the standards of § 93.305 and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate and must specifically approve them in writing.

(g) *Special considerations for single family properties with more than one unit.* (1) If the HTF funds are used only to assist an income-eligible homebuyer in acquiring one unit in a single family property containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit.

(2) If HTF funds are also used to assist the income-eligible homebuyer in acquiring one or more of the rental units in the single family property, the affordability requirements of § 93.302 apply to assisted rental units, except that the grantee must impose resale restrictions on all assisted units (owner-occupied and rental units) in the single-family housing. The affordability requirements on all assisted units continue for the period of affordability. If HTF funds are used to assist only the rental units in such a property, then the requirements of § 93.302 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of this section.

(h) *Lease-purchase.* (1) HTF funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The housing must be purchased by an eligible homebuyer within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as an income-eligible family at the time the lease-purchase agreement is signed.

(2) If HTF funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HTF affordability requirements for rental housing in § 93.302 shall apply if the housing is not transferred to an eligible homebuyer within 42 months after project completion.

(i) *Contract to purchase.* If HTF funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, the homebuyer must qualify as an income-eligible family at the time the contract is signed.

(j) If there is no ratified sales contract with an eligible homebuyer for the housing within 9 months of the date of completion of construction or rehabilitation, the housing must be

rented to an eligible tenant in accordance with § 93.301.

(k) *Preserving affordability.* (1) To preserve the affordability of housing that was previously assisted with HTF funds and subject to the requirements of this section, a grantee may use additional HTF funds to acquire the housing through a purchase option, right of first refusal, or other preemptive right before foreclosure, or to acquire the housing at the foreclosure sale, undertake any necessary rehabilitation, and provide assistance to another first-time homebuyer. The housing must be sold to a new eligible homebuyer in accordance with the requirements of this section. Additional HTF funds may not be used if the mortgage in default was funded with HTF funds.

(2) The total amount of original and additional HTF assistance may not exceed the maximum per-unit development subsidy amount established pursuant to § 93.300. As an alternative to charging the cost to the HTF program under § 93.201, the grantee may charge the cost to the HTF program under § 93.302 as a reasonable administrative cost of its HTF program, so that the additional HTF funds for the housing are not subject to the maximum per-unit subsidy amount.

(l) *Agreements with lending institutions.* (1) The grantee may provide homeownership assistance through written agreements with for-profit or nonprofit lending institutions that are providing the first mortgage loan to a family. The grantee must independently verify that the family is income-eligible and meets the definition of ''first-time homebuyer,'' and must inspect the housing for compliance with the applicable property standards.

(2) No fees may be charged to the family for the HTF homeownership assistance (*e.g.,* origination fees or points, processing fees, inspection fees). The grantee must determine that the fees and other amounts charged to the family by the lender for the first mortgage financing are reasonable. Reasonable administrative costs of the HTF homeownership assistance can be charged to the HTF program as a project cost. If the grantee requires lenders to pay a fee to participate in the HTF program, the fee is program income to the HTF program.

(m) *Written policies.* The grantee must have and follow written policies for:

(1) Underwriting standards for homeownership assistance that examine the family's housing debt, overall debt, income, and ability to maintain the housing;

(2) Anti-predatory lending; and

(3) Refinancing loans to which HTF loans are subordinated to ensure that the terms of the new loan are reasonable.

§ 93.305 Qualification as affordable housing: modest housing requirements for homeownership; resale or recapture requirements.

(a) Housing that is for acquisition by a family pursuant to § 93.304 must be modest housing.

(1) The housing must be modest housing as follows: The housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area for newly constructed or standard housing. The grantee must use the HTF affordable homeownership limits provided by HUD for newly constructed housing and for existing housing. HUD will provide limits for affordable newly constructed housing based on 95 percent of the median purchase price for the area using Federal Housing Administration (FHA) single family mortgage program data for newly constructed housing, with a minimum limit based on 95 percent of the U.S. median purchase price for new construction for nonmetropolitan areas. HUD will provide limits for affordable existing housing based on 95 percent of the median purchase price for the area using FHA single family mortgage program data for existing housing data and other appropriate data that are available nation-wide for sales of existing housing, with a minimum limit based on 95 percent of the state-wide nonmetropolitan area median purchase price using these data. For States with no non-metropolitan areas, the minimum purchase price is defined as the lesser of the State non-metro or the United States non-metro median.

(2) In lieu of the limits provided by HUD, the grantee may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows: The grantee must set forth the price for different types of single family housing for the jurisdiction. The grantee may determine separate limits for existing housing and newly constructed housing. For housing located outside of metropolitan areas, a grantee may aggregate sales data from more than one county, if the counties are contiguous and similarly situated. The following information must be included in the annual action plan of the consolidated plan submitted to HUD for review and updated in each action plan:

(i) The 95 percent of median area purchase price must be established in accordance with a market analysis that ensured that a sufficient number of recent housing sales are included in the survey.

(ii) Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a 2-month reporting period; for less than 250 sales per month, at least a 3-month reporting period. The data must be listed in ascending order of sales price.

(iii) The address of the listed properties must include the location within the grantee. Lot, square, and subdivision data may be substituted for the street address.

(iv) The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire area.

(v) To determine the median, take the middle sale on the list if an odd number of sales, and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by 0.95 to determine 95 percent of the median area purchase price.

(b) *Resale or recapture requirements.* The grantee must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. The HTF-assisted housing must meet the affordability requirements for not less than 30 years if resale restrictions are used. If recapture restrictions are used, the affordability periods are based on the amount of HTF funds per unit as follows:

Homeownership assistance HTF amount per-unit	Minimum period of affordability in years
Under $30,000	10
$30,000–$50,000	20
Over $50,000	30

(1) *Resale.* Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a very low-income family and will use the property as the family's principal residence. The resale requirement must also ensure that the price at resale provides the original HTF-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of income-eligible homebuyers. The grantee must specifically define ''fair

return on investment'' and ''affordability to a reasonable range of very low-income homebuyers,'' and specifically address how it will make the housing affordable to an income eligible homebuyer in the event that the resale price necessary to provide fair return is not affordable to the subsequent buyer. Deed restrictions, covenants running with the land, or other mechanisms approved by HUD must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure, or assignment of an FHA insured mortgage to HUD. The grantee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(2) *Recapture.* (i) Recapture provisions must ensure that the grantee recoups all or a portion of the HTF assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The grantee may structure its recapture provisions based on its program design and market conditions. Recapture provisions may permit the subsequent homebuyer to assume the HTF assistance (subject to the HTF requirements for the remainder of the period of affordability) if the subsequent homebuyer is income-eligible, and no additional HTF assistance is provided.

(ii) The following options for recapture requirements are acceptable to HUD. The grantee may adopt, modify, or develop its own recapture requirements for HUD approval. In establishing its recapture requirements, the grantee is subject to the limitation that, when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayment (other than HTF funds) and any closing costs.

(A) *Recapture entire amount.* The grantee may recapture the entire amount of the HTF assistance from the homeowner.

(B) *Reduction during affordability period.* The grantee may reduce the HTF assistance amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.

(C) *Shared net proceeds.* If the net proceeds are not sufficient to recapture the full HTF assistance (or a reduced amount as provided for in this section) plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the grantee may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HTF funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\frac{\text{HTF investment}}{\text{HTF investment + homeowner investment}} \times \text{Net proceeds} = \text{HTF amount to be recaptured}$$

$$\frac{\text{homebuyer investment}}{\text{HTF investment + homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

(D) *Owner investment returned first.* The grantee may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HTF assistance.

(E) *Amount subject to recapture.* The HTF assistance that is subject to recapture is based on the amount of HTF assistance that enabled the homebuyer to buy the dwelling unit. This includes any HTF assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (*i.e.,* the development subsidy). The recaptured funds must be used to carry out HTF-eligible activities in accordance with the requirements of this part. If the HTF assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.

Subpart H—Other Federal Requirements

§ 93.350 Other federal requirements and nondiscrimination; affirmative marketing.

(a) *General.* The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HTF program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.

(b) *Affirmative marketing.* (1) Each grantee must adopt and follow affirmative marketing procedures and requirements for rental projects containing five or more HTF-assisted housing units and for homeownership assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If a grantee's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with § 93.303(d)(3), the grantee must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy (*e.g.,* the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices the grantee and owner must adhere to in order to carry out the grantee's affirmative marketing procedures and requirements (*e.g.,* use of commercial media, use of community contacts, use of the Equal Housing Opportunity

logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by the grantee and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the rental housing or homeownership assistance program without special outreach (*e.g.,* through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the grantee and owners to affirmatively market rental housing units and homeownership assistance program and records to assess the results of these actions; and

(v) A description of how the grantee will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(3) A grantee that subgrants HTF funds to subgrantees must require each subgrantee to either follow the grantee's procedures and requirements or adopt its own affirmative marketing procedures and requirements that meet this section.

§ 93.351 Lead-based paint.

Housing assisted with HTF funds is subject to the regulations at 24 CFR part 35, subparts A, B, J, K, and R.

§ 93.352 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the grantee must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HTF funds. To the extent feasible, displaced residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons*—(1) *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and 49 CFR part 24. A ''displaced person'' must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) *Displaced person.* (i) For purposes of this paragraph (c), the term ''displaced person'' means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HTF funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After notice by the owner to move permanently from the property, if the move occurs on or after:

(*1*) The date of the submission of an application to the grantee or HUD, if the applicant has site control and the application is later approved; or

(*2*) The date the grantee approves the applicable site, if the applicant does not have site control at the time of the application; or

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the grantee or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*i*) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or

(*ii*) The total tenant payment, as determined under 24 CFR 5.628, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(*i*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(*ii*) Other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a ''displaced person'' if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 calendar days advance written notice to the tenant specifying the grounds for the action.

(B) The person moved into the property after the submission of the application, but before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (*e.g.,* the person may be displaced,

temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a ''displaced person'' (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The grantee may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under this paragraph (c) to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition, or acquisition of the real property, the term ''initiation of negotiations'' means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) *Optional relocation assistance.* The grantee may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HTF funds where the displacement is not subject to paragraph (c) of this section. The grantee may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by State or local law, the grantee must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(f) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the grantee.

§ 93.353 Conflict of interest.

(a) *Applicability of 2 CFR 200.318.* In the procurement of property and services by grantees and subgrantees, the conflict of interest provisions in 2 CFR 200.318 apply. In all cases not governed by 2 CFR 200.318, the provisions of this section apply.

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HTF funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HTF-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HTF-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage, or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the grantee or subgrantee.

(d) *Exceptions: Threshold requirements.* Upon the written request of the grantee, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HTF and the effective and efficient administration of the grantee's program or project. An exception may be considered only after the grantee has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the grantee's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the grantee has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of income eligible persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) *Recipient*—(1) *General.* No recipient assisted with HTF funds (or officer, employee, agent, elected or appointed official, or consultant of recipient or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of a recipient) whether private, for-profit or nonprofit, may occupy a HTF-assisted affordable housing unit in a project during the required period of affordability specified in § 93.302(e) or § 93.304. This provision does not apply to an employee or agent of the recipient who occupies a housing unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a recipient, the grantee (or subgrantee, if authorized by the grantee) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HTF program and the effective and efficient administration of the recipient's HTF-assisted project. In determining whether to grant a requested exception, the grantee shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 93.303 are being observed;

(iv) Whether the affirmative marketing requirements of § 93.350 are being observed and followed; and

(v) Any other factor relevant to the grantee's determination, including the timing of the requested exception.

§ 93.354 Funding Accountability and Transparency Act.

The HTF grant to the grantee and all assistance provided to subgrantees and recipients shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).

§ 92.355 Eminent domain.

No HTF funds may be used in conjunction with property taken by eminent domain, unless eminent domain is employed only for a public use, except that, public use shall not be construed to include economic development that primarily benefits any private entity.

Subpart I—Program Administration

§ 93.400 Housing Trust Fund (HTF) accounts.

(a) *General.* HUD will establish an HTF United States Treasury account (HTF Treasury account) for each grantee. Each grantee may use either a separate HTF local account or a subsidiary account within its general fund (or other appropriate fund) as the HTF local account.

(b) *HTF Treasury account.* The HTF Treasury account includes the annual grant and funds reallocated to the State by formula.

(c) *HTF local account.* (1) The HTF local account includes deposits of HTF funds disbursed from the HTF Treasury account, any program income, and any repayments as required by § 93.403.

(2) The HTF local account must be interest-bearing.

(d) *Reductions.* HUD will reduce or recapture funds in the HTF account by the amount of:

(1) Any fiscal year grant funds in the HTF Treasury account that are not committed within 24 months after the date of HUD's execution of the HTF grant agreement;

(2) Any fiscal year grant funds in the HTF local account that are not expended within 5 years after the date of HUD's execution of the HTF grant agreement;

(3) Any amounts pursuant to § 93.453; and

(4) Amounts that the grantee fails to obtain and that were required to be reimbursed or returned under § 93.450.

§ 93.401 HTF grant agreement.

Allocated and reallocated funds will be made available pursuant to an HTF grant agreement.

§ 93.402 Program disbursement and information system.

(a) *General.* The HTF Treasury account is managed through a computerized disbursement and information system established by HUD. The system disburses HTF funds that are allocated or reallocated, and collects and reports information on the use of funds in the HTF Treasury account. The grantee must report on the receipt and use of all program income in HUD's computerized disbursement and information system. The grantee must develop and maintain a system to ensure that each recipient and subgrantee uses HTF funds in accordance with the requirements of this part and that any requirements or conditions under which the HTF funds were provided.

(b) *Project set-up.* (1) After the grantee executes the HTF grant agreement, submits the applicable banking and security documents, and commits funds to a specific local project, the grantee shall identify (set up) specific activities (*i.e.,* projects) in the disbursement and information system. Investments that require the set-up of projects in the system are the acquisition, new construction, or rehabilitation of housing, operating cost assistance, and operating cost assistance reserves. The grantee is required to enter complete project set-up information at the time of project set-up.

(2) If the project set-up information is not completed within 20 calendar days of the date of the initial project set-up, the project may be canceled by the system. In addition, a project that has been committed in the system for 12 months without an initial disbursement of funds may be canceled by the system.

(c) *Disbursement of HTF Funds.* (1) After complete project set-up information is entered into the disbursement and information system, HTF funds for the project may be drawn down from the HTF Treasury account by the grantee by electronic funds transfer. Any drawdown of funds in the HTF Treasury account is conditioned upon the provision of satisfactory information by the grantee about the project and compliance with other procedures, as specified by HUD.

(2) Funds drawn from the HTF Treasury account are subject to the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and regulations at 31 CFR part 205.

(3) Funds in the HTF local account must be disbursed before requests are made for funds in the HTF Treasury account.

(d) *Project completion.* (1) Complete project completion information must be entered into the disbursement and information system, or otherwise provided, within 120 calendar days of the date of the final project drawdown. If satisfactory project completion information is not provided, HUD may suspend further project set-ups or take other corrective actions.

(2) Additional HTF funds for development-related costs may be committed to a project up to one year after project completion, but the amount of HTF funds in the project may not exceed the maximum per-unit development subsidy amount established pursuant to § 93.300.

(e) *Access by other participants.* Access to the disbursement and information system by other entities participating in the HTF program will be governed by procedures established by HUD.

§ 93.403 Program income and repayments.

(a) *Program income.* Program income must be treated as HTF funds and must be used in accordance with the requirements of this part. Program income must be deposited in the grantee's HTF local account unless the grantee permits a subgrantee to retain the program income for additional HTF projects pursuant to the written agreement required by § 93.404(b). The grantee must report the program income received as well as the use of the program income in the disbursement and information system that HUD designates for the HTF.

(b) *Repayments.* (1) Any HTF funds invested in housing that does not meet the affordability requirements for the period specified in § 93.302 or § 93.304, as applicable, must be repaid by the grantee in accordance with paragraph (b)(3) of this section.

(2) Any HTF funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the grantee, in accordance with paragraph (b)(3) of this section.

(3) HUD will instruct the grantee to either repay the funds to the HTF Treasury account or the local account. Generally, if the HTF funds were disbursed from the grantee's HTF Treasury account, they must be repaid to the HTF Treasury account. If the HTF funds were disbursed from the grantee's HTF local account, they must be repaid to the local account.

(4) If the grantee is no longer a grantee in the HTF program when the repayment is made, the funds must be remitted to HUD and reallocated in accordance with § 93.54 of this part.

§ 93.404 Grantee responsibilities; written agreements; onsite inspections; financial oversight.

(a) *Responsibilities.* The grantee is responsible for managing the day-to-day operations of its HTF program, ensuring that HTF funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of subgrantees or contractors does not relieve the grantee of this responsibility. The performance and compliance of each contractor and subgrantee must be reviewed at least annually. The grantee must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

(b) *Executing a written agreement.* Before disbursing any HTF funds to any entity, the grantee must enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of this part.

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements by role and the minimum provisions that must be included in a written agreement.

(1) *Subgrantee.* The agreement must require the subgrantee to comply with the requirements applicable to the grantee under this part. The agreement between the grantee and the subgrantee must include:

(i) *Use of the HTF funds.* An HTF subgrantee that is a unit of general local government must have a consolidated plan under 24 CFR part 91, and the written agreement must require that an HTF allocation plan to be part of the subgrantee's consolidated plan (see 24 CFR 91.220(l)(5)). The HTF allocation plan of an HTF subgrantee that is a State agency is included in the grantee's HTF allocation plan. The grantee may impose restrictions on the use of funds by the subgrantee, *e.g.,* limit to rental projects. The written agreement must require that the selection of projects by eligible recipients will be in accordance with the HTF allocation plan. The agreement must describe the tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects), a budget, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement.

(ii) *Deadlines.* The agreement must state the time requirements for the commitment and expenditure of HTF funds and specify that remaining funds will be reduced or recaptured by the grantee so that the grantee can meet its commitment and expenditure deadlines in § 93.400.

(iii) *Audit.* The agreement must state that an audit of the subgrantee must be conducted at least annually, in accordance with § 93.406.

(iv) *Program income.* The agreement must state if program income is to be remitted to the grantee or to be retained by the subgrantee for additional HTF eligible activities.

(v) *Uniform administrative requirements.* The agreement must require the subgrantee to comply with the requirements of 2 CFR part 200, as described in § 93.405. The agreement must include the information in 2 CFR 200.331.

(vi) *Other program requirements.* The agreement must require the subgrantee to carry out each project in compliance with all Federal laws and regulations described in §§ 93.350–93.354 of this part.

(vii) *Affirmative marketing.* The agreement must specify the subgrantee's affirmative marketing responsibilities, in accordance with § 93.350.

(viii) *Requests for disbursement of funds.* The agreement must specify that the subgrantee may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subgrantee requests grant funds from the grantee.

(ix) *Reversion of assets.* The agreement must specify that upon closeout of the subgrant agreement, the subgrantee must transfer to the grantee any HTF funds on hand and any accounts receivable attributable to the use of HTF funds.

(x) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(xi) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. The agreement must specify that, in accordance with 2 CFR 200.338, suspension or termination may occur if the subgrantee materially fails to comply with any term of the agreement. The grantee may permit the agreement to be terminated in whole or in part, in accordance with 2 CFR 200.339.

(xii) *Written agreement.* The agreement must require that before the subgrantee provides HTF funds to eligible recipients, first-time homebuyers, or contractors, the subgrantee must have a written agreement that meets the requirements of this section.

(xiii) *Duration of the agreement.* The agreement must specify the period of performance of the agreement.

(xiv) *Fees.* The agreement must prohibit the subgrantee from charging servicing, origination, or other fees for the costs of administering the HTF program, except that:

(A) The subgrantee may charge owners of rental projects reasonable annual fees for compliance monitoring during the period of affordability. The fees must be based upon the average actual cost of performing the monitoring of HTF-assisted rental projects. The basis for determining the amount of the fee amount must be documented and the fee must be included in the costs of the project as part of the project underwriting;

(B) The subgrantee may charge nominal application fees (although these fees are not an eligible HTF cost) to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to an income-eligible family's, or other potential recipient's participation in the HTF program; and

(C) The subgrantee may charge homebuyers a fee for housing counseling.

(2) *Eligible recipient.* The agreement between the grantee and the eligible recipient selected for funding must include:

(i) *Use of the HTF funds.* The agreement must describe the use of the HTF funds for the project, including the tasks to be performed, a schedule for completing the tasks and project (including the expenditure deadline), and a project budget. These items must be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement. If the grantee is providing operating cost assistance, the written agreement must include the provisions required by § 93.201.

(ii) *Deadlines.* The agreement must state the time requirements for the commitment and expenditure of HTF

funds and specify that remaining funds will be reduced or recaptured.

(iii) *Audit.* The agreement must specify that the recipient will submit to the grantee a cost certification performed by a certified public accountant for each project assisted with HTF funds. The agreement must specify that the recipient will submit to the grantee an annual audit performed on each project assisted with HTF funds, beginning the first year following the cost certification and with the final annual audit occurring the last year of the affordability period.

(iv) *Affordability.* The agreement must specify the affordability period, require housing assisted with HTF funds to meet the affordability requirements of § 93.302 or § 93.304, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. If the recipient is undertaking a rental project, the agreement must establish the initial rents and the procedures for rent increases, the number of HTF units, the size of the HTF units, the designation of the HTF units as fixed or floating, and the requirement to provide the address (*e.g.,* street address and apartment number) of each HTF unit no later than the time of project completion. If the recipient is undertaking homeownership projects for sale to first-time homebuyers, in accordance with § 93.304, the agreement must establish the resale or recapture requirements that must be imposed on the housing, the sales price or the basis upon which the sales price will be determined, and the disposition of the sales proceeds.

(v) *Project requirements.* The agreement must require the housing to meet the property standards in § 93.301 of this part, as applicable, and in accordance with the type of project assisted upon project completion. The agreement must also require owners of rental housing assisted with HTF funds to maintain the housing in compliance with § 93.301 of this part for the duration of the affordability period, and to comply with the requirements of § 93.303. The agreement may permit the recipient to limit eligibility or give a preference to a particular segment of the population, only if the grantee has described any such limited eligibility or preference in its consolidated plan; provided, however, that any limitation or preference cannot violate nondiscrimination requirements in § 93.350.

(vi) *Other program requirements.* The agreement must require the eligible recipient to carry out each project in compliance with all Federal laws and regulations described in §§ 93.350 through 93.355 of this part.

(vii) *Affirmative marketing.* The agreement must specify the recipient's affirmative marketing responsibilities, as enumerated by the grantee in accordance with § 93.350.

(viii) *Requests for disbursement of funds.* The agreement must specify that the recipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(ix) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted to assist the grantee in meeting its recordkeeping and reporting requirements. The owner of rental housing must annually provide the grantee with information on rents and occupancy of HTF-assisted units to demonstrate compliance with § 93.302. If the rental housing project has floating HTF units, the owner must provide the grantee with information regarding unit substitution and filling vacancies so that the project remains in compliance with HTF rental occupancy requirements. The agreement must specify the reporting requirements (including copies of financial statements) to enable the grantee to determine the financial condition (and continued financial viability) of the rental project.

(x) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the grantee and the intended beneficiaries. This means of enforcement and the affordability requirements in § 93.302 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee and beneficiaries may require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(xi) *Duration of the agreement.* The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the grantee under § 93.302. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the first-time homebuyer.

(xii) *Fees.* The agreement must prohibit project owners from charging origination fees, parking fees, laundry room access fees, and other fees; however, rental project owners may charge reasonable application fees to prospective tenants.

(3) *First-time homebuyer.* When a grantee provides assistance to a homebuyer, the written agreement must include as a minimum:

(i) *Use of the HTF funds.* The agreement must conform to the requirements in § 93.304, including the limitations on the value of the property, principal residence requirement, lease-purchase terms, if applicable, and the resale or recapture provisions. The agreement must specify the amount of HTF funds, the form of assistance (*e.g.,* grant, amortizing loan, deferred payment loan), the use of the funds (*e.g.,* downpayment, closing costs), and the time by which the housing must be acquired.

(ii) *Resale or recapture restrictions.* The agreement must specify the resale or recapture restrictions established under § 93.304 for the specified time period.

(iii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the grantee. The means of enforcement and the affordability requirements in § 93.304 for resale restrictions must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the grantee may require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(d) *Onsite inspections*—(1) *Project completion.* The grantee must perform an onsite inspection of each HTF-assisted project at project completion to determine that the housing meets the property standards of § 93.301. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of § 93.301.

(2) *Period of affordability.* (i) During the period of affordability, the grantee must perform onsite inspections of HTF-assisted rental housing buildings to determine compliance with the ongoing property standards of § 93.301 and to verify the information submitted by the owners in accordance with the requirements of § 93.302. The inspections must be in accordance with the inspection procedures that the grantee establishes to meet the inspection requirements of § 93.301.

(ii) The onsite inspections must occur 12 months after project completion and at least once every 3 years thereafter during the period of affordability.

(iii) If there are observed deficiencies for any of the inspectable items

established by the grantee, in accordance with the inspection requirements of § 93.301, a follow-up onsite inspection must occur within 12 months, or within a reasonable time frame established by the grantee depending on the severity of the deficiency, to verify that all observed deficiencies have been corrected. The grantee may establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation rather than reinspection. The grantee must adopt a more frequent inspection schedule for properties that have been found to have health and safety violations. Life-threatening health and safety deficiencies must be corrected immediately, in accordance with § 93.301.

(iv) The property owner must annually certify to the grantee that each building in the project is suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the grantee to meet the requirements of § 93.301.

(v) Inspections must be based on a statistically valid sample of units appropriate for the size of the HTF-assisted project, as set forth by HUD through notice. The grantee must select the sample. For projects with one to four HTF-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HTF-assisted units and 100 percent of the HTF-assisted dwelling units must be inspected.

(e) *Financial oversight.* During the period of affordability, the grantee must examine regularly (at least annually) the financial condition of HTF-assisted rental projects with 10 or more HTF-assisted units to determine the continued financial viability of the housing and must take actions to correct problems.

§ 93.405 Applicability of uniform administrative requirements, cost principles, and audits.

The requirements of 2 CFR part 200 apply to the grantees and subgrantees receiving HTF funds, except for the following provisions: §§ 200.307, 200.311, 300.328(b), 200.329, and 200.333. If there is a conflict between the definitions in 2 CFR part 200 and 24 CFR part 93, the definitions in part 93 govern.

§ 93.406 Audits.

(a) Audits of the grantee and subgrantees must be conducted in accordance with 2 CFR part 200, subpart F. The use of HTF grant funds by the grantee must be audited not less than annually to ensure compliance with this part. Any financial statement submitted by the grantee to HUD must be reviewed by an independent certified public accountant, in accordance with Statements on Standards for Accounting and Review Services, which is issued by the American Institute of Certified Public Accountants.

(b) The written agreement providing HTF assistance to the recipient must specify that the recipient will submit to the grantee a cost certification performed by a certified public accountant for each project assisted with HTF funds. The agreement must specify that the recipient will submit to the grantee an annual audit performed on each project assisted with HTF funds, beginning the first year following the cost certification and with the final annual audit occurring the last year of the affordability period.

§ 93.407 Recordkeeping.

(a) *General.* Each grantee must establish and maintain sufficient records to enable HUD to determine whether the grantee has met the requirements of this part. At a minimum, the following records are needed:

(1) *Program records.* (i) The forms of HTF assistance used in the program.

(ii) The subsidy layering guidelines adopted in accordance with § 93.300.

(iii) If HTF funds are used for housing for first-time homebuyers, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with § 93.305, as set forth in the consolidated plan.

(iv) If HTF funds are used for acquisition of housing for homeownership, the resale guidelines established in accordance with § 93.304, as set forth in the consolidated plan.

(v) Records documenting compliance with the 24-month commitment deadline of § 93.400(d)(l).

(vi) Records documenting compliance with the 10 percent limitation on administrative and planning costs in accordance with § 93.202.

(2) *Project records.* (i) A full description of each project assisted with HTF funds, including the location (address of each unit), form of HTF assistance, and the units assisted with HTF funds.

(ii) The source and application of funds for each project, including supporting documentation, in accordance with 2 CFR 200.333 through 200.337, and records to document the eligibility and allowability of the project costs, including the documentation of the actual HTF-eligible development costs of each HTF-assisted unit (through allocation of costs, if permissible under § 93.200(c)) where HTF funds are used to assist less than all of the units in a multi-unit project.

(iii) Records demonstrating that each rental housing or homeownership project meets the maximum per-unit subsidy amount established pursuant to § 93.300(a), and the subsidy layering and underwriting evaluation in accordance with § 93.300.

(iv) Records (*e.g.,* inspection reports) demonstrating that each project meets the property standards of § 93.301 of this part at project completion. In addition, during the period of affordability, records for rental projects demonstrating compliance with the property standards, and financial reviews and actions pursuant to § 93.404(a).

(v) Records demonstrating that each family is income-eligible.

(vi) Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 93.302 for the required period. Records must be kept for each family assisted.

(vii) Records demonstrating that each lease for an assisted rental housing unit complies with the tenant and participant protections of § 93.303. Records must be kept for each family assisted.

(viii) Records demonstrating that the purchase price for each housing unit for a first-time homebuyer does not exceed 95 percent of the median purchase price for the area, in accordance with § 93.305.

(ix) Records demonstrating that each housing unit for a first-time homebuyer meets the affordability requirements of § 93.304 for the required period.

(x) Records demonstrating that a site and neighborhood standards review was conducted for each project that included new construction of rental housing assisted under this part, to determine that the site meets the requirements of § 93.150.

(xi) Records (written agreements) demonstrating compliance with the written agreements requirements in § 93.404.

(3) *Financial records.* (i) Records identifying the source and application of funds for each fiscal year, including the annual grant and any reallocation (identified by federal fiscal year).

(ii) Records concerning the HTF Treasury account and local account required to be established and maintained by § 93.400, including deposits, disbursements, balances, supporting documentation, and any other information required by the

program disbursement and information system established by HUD.

(iii) Records identifying the source and application of program income and repayments.

(iv) Records demonstrating adequate budget control, in accordance with 2 CFR part 200, including evidence of periodic account reconciliations.

(4) *Program administration records.* (i) Written policies, procedures, and systems, including a system for assessing risk of activities and projects, and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

(ii) Records demonstrating compliance with the applicable uniform administrative requirements required by § 93.405.

(iii) Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

(5) *Records concerning other Federal requirements.* (i) Equal opportunity and fair housing records, as required under 24 CFR part 121.

(A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HTF funds.

(B) Documentation of actions undertaken to meet the requirements of 24 CFR part 135, which implements section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

(ii) Records demonstrating compliance with the affirmative marketing procedures and requirements of § 93.350.

(iii) Records demonstrating compliance with the lead-based paint requirements of 24 part 35, subparts A, B, J, K, M, and R.

(iv) Records demonstrating compliance with requirements of § 93.352 regarding displacement, relocation, and real property acquisition.

(v) Records supporting exceptions to the conflict-of-interest prohibition pursuant to § 93.353.

(vi) Debarment and suspension certifications required by 24 CFR5.105(c) and 2 CFR part 2424.

(vii) Records demonstrating compliance with § 93.354.

(viii) Records demonstrating compliance with 2 CFR 200.321 regarding the grantee's activities related to minority business enterprise (MBE) and women's business enterprise (WBE).

(b) *Period of record retention.* All records pertaining to each fiscal year of HTF funds must be retained in a secure location for the most recent 5-year period, except as provided below.

(1) For rental housing projects, records may be retained for 5 years after the project completion date, except that records of individual tenant income verifications, project rents, and project inspections must be retained for the most recent 5-year period, until 5 years after the affordability period terminates.

(2) For homeownership housing projects, records may be retained for 5 years after the project completion date, except for documents imposing resale or recapture restrictions that must be retained for 5 years after the affordability period terminates.

(3) Written agreements must be retained for 5 years after the agreement terminates.

(4) Records covering displacements and acquisitions must be retained for 5 years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled, in accordance with § 93.352.

(5) If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues that arise from it, or until the end of the required period, whichever is later.

(c) *Access to records.* (1) The grantee must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, and any of their representatives, have the right of access to any pertinent books, documents, papers, or other records of the grantee, subgrantees, and recipients, to make audits, examinations, excerpts, and transcripts.

§ 93.408 Performance reports.

Each grantee must develop and maintain a system to track the use of its HTF funds, and submit annual performance and management reports on its HTF program in accordance with 24 CFR 91.520. HUD will make the performance and management reports publicly available.

Subpart J—Performance Reviews and Sanctions

§ 93.450 Accountability of recipients.

The grantee shall review each recipient to determine compliance with the requirements of this part and the terms of the written agreement in accordance with the grantee's policies, procedures, and systems established pursuant to § 93.404(a).

(a) *Misuse of funds*—(1) *Reimbursement requirement.* If a recipient of HTF assistance is determined to have used HTF funds in a manner that is materially in violation of the requirements of this part or any requirements or conditions under which the funds were provided, the grantee must require that, within 12 months after the determination of such misuse, the recipient reimburse the grantee for such misused amounts and return to the grantee any such amounts that remain unused or uncommitted for use. The reimbursement is in addition to any other remedies that may be available under law.

(2) *Determination.* The grantee or HUD may make the determination, provided that:

(i) The grantee provides notification and opportunity for discretionary review to HUD; and

(ii) HUD does not subsequently reverse the determination.

(b) *Reduction for failure to obtain return of misused funds.* (1) If, in any year, a grantee fails to obtain reimbursement or return of the full amount required to be reimbursed or returned to the grantee during the year, the amount of the grant for the grantee for the succeeding year will be reduced by the amount by which the amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned.

(2) In any case in which a failure to obtain reimbursement or return occurs during a year immediately preceding a year in which HTF grants will not be made, the grantee shall pay to HUD, for reallocation among the other grantees, an amount equal to the amount of the reduction for the entity that would otherwise apply.

§ 93.451 Performance reviews.

(a) *General.* HUD will review the performance of each grantee in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the grantee's records and reports, findings from onsite monitoring, audit reports, and

information generated from the disbursement and information system established by HUD. Where applicable, HUD may also consider relevant information pertaining to a grantee's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the grantee. Onsite comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the grantee.

(b) *Standards for comprehensive performance review.* A grantee's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine whether the grantee has committed and expended the HTF funds as required by § 93.400; has met the requirements of this part, particularly eligible activities, income targeting, affordability, and property standards; has awarded the funds in accordance with its HTF allocation plan and requirements of this part; has reviewed its subgrantees and recipients to determine whether they have satisfied the requirements of this part and the terms of their written agreements; and has met its performance measures in its consolidated plan.

§ 93.452 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 93.451 and in taking corrective and remedial actions.

(b) *Performance review.* (1) If HUD determines preliminarily that the grantee has not met a requirement of this part, the grantee will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 calendar days) and on the basis of substantial facts and data, that it has done so.

(2) If the grantee fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or § 93.453.

(c) *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the grantee to submit and comply with proposals for action to correct, mitigate, and prevent a performance deficiency, including:

(i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the performance deficiency, before expending HTF funds for the activities;

(iv) Reprogramming HTF funds that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing its HTF account in any amount not used in accordance with the requirements of this part;

(vi) Suspending disbursement of HTF funds for affected activities; and

(vii) Establishing procedures to ensure compliance with HTF requirements;

(2) HUD may also change the method of payment from an advance to reimbursement basis and may require supporting documentation to be submitted for HUD review for each payment request before payment is made; determine the grantee to be high risk and impose special conditions or restrictions on the allocation in accordance with 2 CFR 200.207 or 200.338; and take other remedies that may be legally available.

§ 93.453 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a grantee has substantially failed to comply with any provision of this part, and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the grantee's HTF account by the amount of any expenditures that were not in accordance with the requirements of this part or require the grantee to repay to HUD any amount of the HTF grant that was not used in accordance with the requirements of this part; and

(2) HUD may do one or more of the following:

(i) Prevent withdrawals from the grantee's HTF account for activities affected by the failure to comply;

(ii) Restrict the grantee's activities under this part to activities or recipients not affected by the failure to comply;

(iii) Remove the State from participation in allocations or reallocations of funds made available under §§ 93.50 through 93.54 of this part; or

(iv) Terminate any HTF assistance to the grantee. HUD may, on due notice, suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (a) of this section, pending such hearing and a final decision, to the extent that HUD determines such action to be necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the grantee. Proceedings will be conducted in accordance with 24 CFR part 26.

Dated: January 23, 2015.

Julián Castro,

Secretary.

[FR Doc. 2015–01642 Filed 1–29–15; 8:45 am]

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Part III

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Part 60–20

Discrimination on the Basis of Sex; Proposed Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–20

[01 14 15 OFCCP]

RIN 1250–AA05

Discrimination on the Basis of Sex

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Labor's (''DOL'') Office of Federal Contract Compliance Programs (''OFCCP'') is proposing regulations that would set forth requirements that covered Federal Government contractors and subcontractors and federally assisted construction contractors and subcontractors must meet in fulfilling their obligations under Executive Order 11246, as amended, to ensure nondiscrimination in employment on the basis of sex and to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex. This proposal would substantially revise the existing Sex Discrimination Guidelines, which have not been substantively updated since 1970, and replace them with regulations that align with current law and legal principles and address their application to current workplace practices and issues. Most of the proposed provisions in this NPRM would clarify well-established case law or applicable requirements from other Federal agencies and therefore would not change existing requirements for entities affected by this rule. The NPRM's approach with respect to pregnancy accommodation is consistent with the interpretation of the Pregnancy Discrimination Act adopted by the Equal Employment Opportunity Commission (EEOC) and by the Government in *Young* v. *United Parcel Serv., Inc.,* 707 F.3d 437 (4th Cir. 2013), *cert. granted* (U.S. No. 12–1226, July 1, 2014).

DATES: To be assured of consideration, comments must be received on or before March 31, 2015.

ADDRESSES: You may submit comments, identified by RIN number 1250–AA05, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 693–1304 (for comments of six pages or less).
- *Mail:* Debra A. Carr, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW., Washington, DC 20210.

Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission has been received by telephoning OFCCP at (202) 693–0104 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers).

All comments received, including any personal information provided, will be available for public inspection during normal business hours at Room C–3325, 200 Constitution Avenue NW., Washington, DC 20210, or via the Internet at *http://www.regulations.gov.* Upon request, individuals who require assistance to review comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice of Proposed Rulemaking (NPRM) will be made available in the following formats: Large print, electronic file on computer disk, and audiotape. To schedule an appointment to review the comments and/or to obtain this NPRM in an alternate format, please contact OFCCP at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C–3325, Washington, DC 20210. Telephone: (202) 693–0104 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

The U.S. Department of Labor's (''DOL'') Office of Federal Contract Compliance Programs (''OFCCP'') is proposing regulations that would set forth requirements that covered [1] Federal Government contractors and subcontractors and federally assisted construction contractors and subcontractors must meet in fulfilling their obligations under Executive Order 11246, as amended, to ensure nondiscrimination in employment on the basis of sex and to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex. The OFCCP is charged with enforcing Executive Order 11246, as amended (''Executive Order''), which prohibits covered Federal Government contractors and subcontractors and federally assisted construction contractors and subcontractors (''contractors'') from discriminating in employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.[2] The Executive Order also requires contractors to ensure equal employment opportunity for employees and applicants for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin and to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to the enumerated bases. OFCCP interprets the nondiscrimination provisions of the Executive Order consistent with the principles of title VII of the Civil Rights Act of 1964 (''title VII''),[3] which is enforced, in large part, by the Equal Employment Opportunity Commission (''EEOC''), the agency responsible for coordinating the Federal government's enforcement of all Federal statutes, Executive Orders, regulations, and policies requiring equal employment opportunity.[4]

The Sex Discrimination Guidelines at 41 CFR part 60–20 (''Guidelines'') set forth interpretations and guidelines for implementing the Executive Order's nondiscrimination and affirmative action requirements related to sex. These Guidelines have not been substantively updated since they were

[1] 41 CFR 60–1.5 exempts certain Federal and federally assisted contractors and subcontractors from coverage. That section exempts contracts and subcontracts not exceeding $10,000 (§ 60–1.5(a)(1)); certain contracts and subcontracts for indefinite quantities (§ 60–1.5(a)(2)); work performed outside the United States by employees who were not recruited within the United States (§ 60–1.5(a)(3)); contracts with certain religious entities and educational institutions (§ 60–1.5(a)(5) and (6)); specific contracts and facilities exempted by the Director of the OFCCP when required by ''special circumstances in the national interest'' (§ 60–1.5(b)(1)) or because they are ''separate and distinct from activities . . . related to the performance of the contract or subcontract'' (§ 60–1.5(b)(2); and contracts determined to be essential to the national security (§ 60–1.5(c)).

[2] Executive Order 13672, issued on July 21, 2014, added sexual orientation and gender identity to Executive Order 11246 as prohibited bases of discrimination. It applies to contracts entered into on or after April 8, 2015, the effective date of the implementing regulations promulgated thereunder.

[3] Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2000e–17; U.S. Department of Labor, Office of Federal Contract Compliance Programs, Federal Contract Compliance Manual, ch. 2, § 2H01(c), *available at http://www.dol.gov/ofccp/regs/compliance/fccm/FCCM_FINAL_508c.pdf* (last accessed June 6, 2014) (hereinafter FCCM).

[4] Executive Order 12067, 43 FR 28967, 3 CFR, 1978 Comp., p. 206. The U.S. Department of Justice also enforces portions of title VII, as do state Fair Employment Practice Agencies (FEPA).

first promulgated in 1970,[5] and fail to conform to or reflect current title VII jurisprudence or to address the needs and realities of the modern workplace. Since 1970, there have been historic changes to sex discrimination law, in both statutory and case law, and to contractor policies and practices as a result of the nature and extent of women's participation in the labor force. Because the existing guidelines are so outdated, they may cause some Federal contractors to incur unnecessary legal and/or management expenses to resolve confusion about possibly conflicting obligations; updating the regulations will reduce the costs that such contractors may now incur.

It is long overdue for part 60–20 to be updated. Consequently, OFCCP proposes in this NPRM to revise the Sex Discrimination Guidelines to align the sex discrimination standards under Executive Order 11246 with developments and interpretations of existing title VII principles and OFCCP's corresponding interpretation of the Executive Order.

Statement of Legal Authority

Issued in 1965, and amended several times in the intervening years—including once in 1967, to add sex as a prohibited basis of discrimination, and most recently in 2014, to add sexual orientation and gender identity to the list of protected bases[6]—Executive Order 11246 has two purposes. First, it prohibits covered Federal contractors and subcontractors from discriminating against employees and applicants because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Second, it requires covered Federal contractors and subcontractors to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. The nondiscrimination and affirmative action obligations of Federal contractors and subcontractors cover all aspects of employment.

The requirements of the Executive Order promote the goals of economy and efficiency in Government contracting, and the link between them is well established. *See, e.g,* Executive Order 10925, 26 FR 1977 (March 8, 1961) (nondiscrimination and affirmative employment programs ensure ''the most efficient and effective utilization of all available manpower''). Executive Order 11246 regulations require government contractors to conduct outreach to broaden the qualified applicant pool; to identify and eliminate any discriminatory practices; to apply merit principles; to choose applicants for employment without regard to race, sex, or national origin; and to report their results. *See, e.g.,* 41 CFR 60–2.10, 60–2.11, 60–2.14, 60–2.16, 60–2.17, 60–20.6. The sex discrimination regulations proposed herein outline the sex-discriminatory practices that contractors must identify and eliminate, and clarify how contractors must choose applicants for employment without regard to sex. *See, e.g.,* proposed § 60–20.2 (clarifying that sex discrimination includes discrimination on the bases of pregnancy, childbirth, related medical conditions, gender identity, and transgender status, and that disparate treatment and disparate impact analyses apply to sex discrimination); § 60–20.3 (clarifying application of the *bona fide* occupational qualification (BFOQ) defense to the rule against sex discrimination); § 60–20.4, § 60–20.5, § 60–20.6, and § 60–20.8 (clarifying that discrimination in compensation; discrimination based on pregnancy, childbirth, or related medical conditions; discrimination in other fringe benefits; and sexual harassment, respectively, can be unlawful sex-discriminatory practices); and § 60–20.7(c) (clarifying that contractors must not choose applicants based on sex stereotypes such as ''a sex-based assumption that [a female employee] . . . will have . . . family caretaking responsibilities [that] will interfere with her work performance'').

Each of these requirements ultimately reduces the government's costs and increases the efficiency of its operations by ensuring that all employees and applicants, including women, are fairly considered and that, in its procurement, the government has access to, and ultimately benefits from, the best qualified and most efficient employees. *Cf. Contractors Ass'n of E. Pa.* v. *Sec'y of Labor,* 442 F.2d 159, 170 (3d Cir. 1971) (''[I]t is in the interest of the United States in all procurement to see that its suppliers are not over the long run increasing its costs and delaying its programs by excluding from the labor pool available minority workmen.''). The proposed regulations' requirements to eliminate discrimination and to choose applicants without regard to sex also are consistent with the purposes of Title VII to eliminate discrimination in employment.

The requirements in Executive Order 11246 generally apply to any business or organization that (1) holds a single Federal contract, subcontract, or federally assisted construction contract in excess of $10,000; (2) has Federal contracts or subcontracts that, combined, total in excess of $10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount.

Pursuant to Executive Order 11246, receiving a Federal contract comes with a number of responsibilities. Section 202 of this Executive Order requires every covered contractor to agree to comply with all provisions of the Executive Order and the rules, regulations, and relevant orders of the Secretary of Labor. A contractor in violation of Executive Order 11246 may be subject to suit for make-whole and injunctive relief and to having its contracts canceled, terminated, or suspended or to debarment after the opportunity for a hearing.[7]

Major Proposed Revisions

For the reasons stated above, OFCCP proposes to revise the Guidelines at part 60–20 to create new sex discrimination regulations that set forth Federal contractors' obligations under Executive Order 11246, in accordance with existing law and policy. This proposal updates the Guidelines to address current issues in the workplace, and clarifies existing title VII law as it relates to sex discrimination, including developments and interpretations of existing law by the EEOC and OFCCP's corresponding interpretation of the Executive Order. It is intended to state clearly the existing principles applicable to a contractor's obligation to refrain from discrimination in its employment policies and practices because of sex and to ensure equal employment opportunity on the basis of sex.

The proposal removes a number of outdated provisions in the current Guidelines; restates, reorganizes, and clarifies others; and adds new ones that address legal developments that have arisen since 1970. Where current provisions of the Guidelines are uncontradicted by the proposed part 60–20, but are omitted because they are, as a practical matter, outdated, their omission does not mean that they are not still good law. For example, paragraph 60–20.2(b) currently states that ''[a]dvertisement in newspapers

[5] 35 FR 8888, June 9, 1970. The Guidelines were reissued in 1978 without substantive amendment. 43 FR 49258, October 20, 1978.

[6] Executive Order 13672, 79 FR 42971 (July 23, 2014).

[7] Executive Order 11246, § 209(5); 41 CFR 60–1.27.

and other media for employment must not express a sex preference unless sex is a *bona fide* occupational qualification for the job.'' This is a correct statement of the law, but does not have much practical effect, because few job advertisements today express a sex preference.[8] OFCCP seeks comments on whether any of the provisions proposed for deletion continue to be useful.

The proposed amendments to part 60–20 offered herein do not in any way alter a contractor's obligations under all other OFCCP regulations. In particular, a contractor's obligations to ensure equal employment opportunity and to take affirmative action, as set forth in parts 60–1, 60–2, 60–3, and 60–4 of this title, remain in effect. Similarly, inclusion of a provision in part 60–20 does not in any way alter a contractor's obligations to ensure nondiscrimination on the basis of race, color, religion, national origin, sexual orientation, and gender identity, under the Executive Order; on the basis of disability under Section 503 of the Rehabilitation Act of 1973 (''Section 503''); [9] or on the basis of protected veteran status under 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act.[10]

Benefits of the Proposed Rule

The proposed rule would benefit both Federal contractors and their employees in several ways. First, by consolidating, updating, and clearly and accurately stating the existing principles of applicable law, including developments and interpretations of existing law by the EEOC and OFCCP's corresponding interpretation of the Executive Order, the proposed rule will facilitate contractor understanding and compliance and thus reduce contractor costs. As discussed above, the existing guidelines are extremely outdated and therefore do not provide sufficient or even accurate guidance to contractors regarding their nondiscrimination obligations. In fact, because OFCCP's interpretations of a contractor's nondiscrimination mandate on the basis of sex follow title VII principles, OFCCP no longer enforces part 60–20 to the extent that it departs from existing law. Maintenance of these outdated and inaccurate guidelines in the regulations may cause Federal contractors to incur unnecessary legal and/or management expenses to resolve confusion about possibly conflicting obligations. Thus, the NPRM will directly reduce the costs that some contractors may now incur when attempting to comply with part 60–20. OFCCP requests comment on the amount of cost savings covered entities may realize because of this rule.

The NPRM would also benefit the employees and job applicants of Federal contractors and subcontractors. In general, by making it easier for Federal contractors to comply with the law, this regulation would increase equality of employment opportunity for the millions of women working for Federal contractor establishments. Sixty-five million employees work for the Federal contractors and other recipients of Federal monies that are included in the General Service Administration's System for Award Management (SAM) database.[11] Based on Bureau of Labor Statistics data showing that 47 percent of the workforce is female,[12] OFCCP estimates that 30.6 million of the employees who work for the Federal contractors and other recipients of Federal monies are women.

More specifically, the NPRM would advance the employment status of female employees of Federal contractors in several ways. First, it would address both *quid pro quo* and hostile-environment sexual harassment. Second, it would clarify that adverse treatment of an employee because of gender-stereotyped assumptions about family caretaking responsibilities is discrimination. It would clarify that childcare leave must be available to fathers on the same terms as they are to mothers. It would also confirm the requirement that contractors provide equal retirement benefits to male and female employees, even if doing so costs more for one sex than the other.

In addition, by clarifying when pregnant workers are entitled to workplace accommodations, this rulemaking will protect pregnant employees who work for Federal contractors from losing their jobs, wages, and health care coverage. OFCCP estimates that 2,046,850 women in the Federal contractor workforce are likely to become pregnant each year. Moreover, by clarifying that discrimination against an individual because of her or his gender identity is unlawful sex discrimination, the NPRM would ensure that contractors are aware of their nondiscrimination obligations with respect to transgender employees and would assure equality of opportunity for transgender employees, the vast majority of whom report that they have experienced discrimination in the workplace.[13]

Finally, the NPRM would benefit public understanding of the law. Removing an ''outmoded'' and ''ineffective'' rule from the Code of Federal Regulations is in the public interest. This public interest is reflected in Section 6 of Executive Order 13563, which requires agencies to engage in retrospective analyses of their rules ''and to modify, streamline, expand, or repeal [such rules] in accordance with what has been learned.''

Costs of the Proposed Rule

A detailed discussion of the costs of the proposed rule is included in the section on Regulatory Procedures, *infra.* In sum, the proposed rule should create relatively minimal administrative and other cost burdens for contractors.

The only new administrative burden the proposed rule would create for contractors would be the one-time cost of regulatory familiarization—the estimated time it takes for contractors to review and understand the instructions for compliance—calculated at just under $26 million, or $52 per contractor company, the first year.

The only other new cost burden this rule would create for contractors would be the cost of pregnancy accommodations, which OFCCP calculates to be under $10 million annually, or $19 per contractor company, per year.[14]

[8] Recruitment for individuals of a certain sex for particular jobs, including recruitment by advertisement, is covered in proposed § 60–20.2(g).

[9] 29 U.S.C. 793.

[10] 38 U.S.C. 4212.

[11] U.S. General Services Administration, System for Award Management, *Legacy CCR Extracts Public (''FOIA'') Data Package,* May 2014, *available at https://www.sam.gov/portal/public/SAM/* (last accessed June 14, 2014).

[12] *Women in the Labor Force: A Databook* 2, BLS Reports, *available at http://www.bls.gov/cps/wlf-databook-2012.pdf* (last accessed Oct. 6, 2014) [hereinafter Women in the Labor Force].

[13] Jaime M. Grant, Lisa M. Mottet, & Justin Tanis, National Center for Transgender Equality & National Gay and Lesbian Task Force, Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, (2011), *available at http://transequality.org/PDFs/Executive_Summary.pdf* (last accessed Oct. 3, 2014) [hereinafter Injustice at Every Turn].

[14] OFCCP estimates approximately 2,046,850 women in the Federal contractor workforce would be pregnant in a year, of whom 21 percent work in job categories likely to require accommodations that might involve more than a *de minimis* cost. Because the incidence of medical conditions during pregnancy that require accommodations ranges from 0.5 percent (placenta previa) to 50 percent (back issues), OFCCP estimates that of the women in positions that require physical exertion or standing, half may require some type of an accommodation or light duty. Based on a study finding that the employers of 91 percent of pregnant women who needed and requested a change in duties such as less lifting or more sitting attempted to address their needs, the proposed rule would require covered contractors to accommodate the nine percent of women whose needs were not addressed or would not have been addressed had they requested accommodation. According to the Job Accommodation Network, the average cost of an accommodation is $500. Therefore, OFCCP

Together, these costs amount to under $36 million, or $71 per contractor company, the first year; and under $10 million, or $19 per contractor company, each subsequent year.

Reasons for Amending the Current Sex Discrimination Guidelines, 41 CFR 60–20

The existing statement of the purpose of the current Guidelines demonstrates their outdated nature. As the ''title and purpose'' section of current part 60–20 states, the Guidelines were first adopted because sex discrimination was perceived as presenting ''special problems [of] implementation'' that required ''a definitive treatment beyond the terms of the [executive] order itself.'' 41 CFR 60–20.1. Five sections, covering ''recruitment and advertisement,'' ''job policies and practices,'' ''seniority system,'' ''discriminatory wages,'' and ''affirmative actions,'' currently follow § 60–20.1.

Since the Guidelines were promulgated in 1970, there have been dramatic changes in women's participation in the workforce. Between 1970 and December 2013, women's participation in the labor force grew from 43 percent to 57 percent.[15] This included a marked increase in employment of mothers: The labor force participation of women with children under the age of 18 increased from 47 percent in 1975 to 70 percent in 2013.[16] In 2013, both adults worked at least part time in 59 percent of married-couple families with children under 18, and 73 percent of mothers heading single-parent families with children under 18 worked at least part time.[17]

Since 1970, there have also been extensive changes in the law regarding sex-based employment discrimination and in contractors' policies and practices governing workers. For example:

- Title VII, which generally governs the law of sex-based employment discrimination, has been significantly amended four times: Once in 1972, by the Equal Employment Opportunity Act;[18] once in 1978, by the Pregnancy Discrimination Act (''PDA'');[19] once in 1991, by the Civil Rights Act;[20] and finally in 2009, by the Lilly Ledbetter Act.[21]
- State ''protective laws'' that had explicitly barred women from certain occupations or otherwise restricted their employment conditions on the basis of sex have been repealed or are unenforceable.[22]
- In 1993, the Family and Medical Leave Act (''FMLA'')[23] was enacted, requiring employers of 50 or more employees to provide a minimum of 12 weeks of annual, unpaid, job-guaranteed leave to both male and female employees to recover from their own serious health conditions (including pregnancy, childbirth, or related medical conditions), to care for a newborn or newly adopted or foster child, or to care for a child, spouse, or parent with a serious health condition.
- In 1970 it was not uncommon for employers to require female employees to retire at earlier ages than their male counterparts. However, the Age Discrimination in Employment Act was amended in 1986 to abolish mandatory retirement for all employees with a few exceptions.[24]

Moreover, since 1970 the Supreme Court has determined that numerous practices which were not then widely recognized as discriminatory constitute unlawful sex discrimination under title VII. See *e.g., City of Los Angeles* v. *Manhart,* 435 U.S. 702 (1978) (requiring equal retirement benefits for women and men, despite statistical differences in longevity); *County of Washington* v. *Gunther,* 452 U.S. 161 (1981) (holding that compensation discrimination is not limited to unequal pay for equal work within the meaning of the Equal Pay Act); *Newport News Shipping & Dry Dock Co.* v. *EEOC,* 462 U.S. 669 (1983) (holding that employer discriminated on the basis of sex by excluding pregnancy-related hospitalization coverage for the spouses of male employees while providing complete hospitalization coverage for the spouses of female employees); *Meritor Savings Bank* v. *Vinson,* 477 U.S. 57 (1986) (recognizing cause of action for sexually hostile work environment); *California Federal S. & L. Assn.* v. *Guerra,* 479 U.S. 272 (1987) (upholding California law requiring up to four months leave and reinstatement to pregnant employees and finding law not inconsistent with title VII); *Price Waterhouse* v. *Hopkins,* 490 U.S. 228, 250 (1989) (finding sex discrimination on basis of sex stereotyping); *Oncale* v. *Sundowner Offshore Servs.,* 523 U.S. 75, 78 (1998) (recognizing cause of action for ''same sex'' harassment); *Int'l Union, United Auto., Aerospace and Agr. Implement. Workers of Am.* v. *Johnson Controls, Inc.,* 499 U.S. 187 (1991) (holding that possible reproductive health hazards to women of childbearing age did not justify sex-based exclusions from certain jobs); *Burlington Industries, Inc.* v. *Ellerth,* 524 U.S. 742 (1998), and *Faragher* v. *City of Boca Raton,* 524 U.S. 775 (1998) (holding employers vicariously liable under title VII for the harassing activity of supervisors who create hostile working conditions for those over whom they have authority); and *Burlington N. & Santa Fe Railway Co.* v. *White,* 548 U.S. 53 (2006) (clarifying broad scope of prohibition of retaliation for filing of charge of sex discrimination).

In response to these legal and economic changes, employment policies and practices have also changed. Contractors rarely adopt or implement explicit rules that prohibit hiring of women for certain jobs; and jobs are no longer advertised in sex-segregated newspaper columns. Women have made major inroads into professions and

estimates that the cost would be $9,671,000 (2,046,850 × 21% × 50% × 9% × $500).

[15] U.S. Census Bureau, *Civilian Population—Employment Status by Sex, Race, and Ethnicity: 1970–2009,* The 2012 Statistical Abstract, *available at http://www.census.gov/compendia/statab/2012/tables/12s0588.pdf* (last accessed Oct. 31, 2014); Bureau of Labor Statistics, U.S. Department of Labor Statistics, *Data Retrieval: Labor Force Statistics (Current Population Survey,* Household Data, Table A–1, Employment status of the civilian population by sex and age, *available at http://www.bls.gov/webapps/legacy/cpsatab1.htm* (last accessed Oct. 3, 2014).

[16] Bureau of Labor Statistics, U.S. Department of Labor, TED: The Economics Daily, Labor force participation rates among mothers,, *available at http://www.bls.gov/opub/ted/2010/ted_20100507_data.htm* (last accessed Oct. 3, 2014) [hereinafter Labor Force Participation: Mothers—2010]; Press Release, Bureau of Labor Statistics, U.S. Department of Labor, Employment Characteristics of Families—2013 (April 25, 2014), *available at http://www.bls.gov/news.release/famee.nr0.htm* (last accessed Nov. 5, 2014) [hereinafter Employment Characteristics of Families—2013].

[17] Employment Characteristics of Families—2013, *supra* note 16.

[18] Equal Employment Opportunity Act of 1972, Public Law 92–261, 86 Stat. 103 (1972).

[19] Amendment to Title VII of the Civil Rights Act of 1964 to Prohibit Sex Discrimination on the Basis of Pregnancy, Public Law 95–555, 995, 92 Stat. 2076 (1978).

[20] Civil Rights Act of 1991, Public Law 102–166, 1745, 105 Stat. 1071 (1991).

[21] Lilly Ledbetter Fair Pay Act of 2009, Public Law 111–2, 123 Stat. 5 (2009).

[22] See, *e.g.,* Conn. Gen. Stat. § 31–18 (*repealed* 1973) (prohibition of employment of women for more than nine hours a day in specified establishments); Mass. Gen. Laws ch. 345 (1911) (*repealed* 1974) (outright prohibition of employment of women before and after childbirth); Ohio Rev. Code Ann. § 4107.43 (*repealed* 1982) (prohibition of employment of women in specific occupations that require the routine lifting of more than 25 pounds); see also *Nashville Gas Co.* v. *Satty,* 434 U.S. 136, 142 (1977) (invalidating public employer requirement that pregnant employees take a leave of absence during which they did not receive sick pay and lost job seniority); *Cleveland Bd. of Educ.* v. *LaFleur,* 414 U.S. 632 (1974) (striking rules requiring leave from after the fifth month of pregnancy until three months after birth); *Somers* v. *Aldine Indep. Sch. Dist.,* 464 F. Supp. 900 (S.D. Tex. 1979) (finding sex discrimination where school district terminated teacher for not complying with requirement that pregnant women take an unpaid leave of absence in their third month or be terminated).

[23] 29 U.S.C. 2601 *et seq.*

[24] 29 U.S.C. 621–634.

occupations traditionally dominated by men. For example, women's representation among doctors tripled, from nearly 12 percent in 1980 [25] to 36 percent in 2013.[26] Executive suites are no longer predominantly segregated by sex, with the executive positions all being occupied by men and women functioning as secretaries. Indeed, in many companies, it is hardly surprising for women to be in positions of considerable power and status. Moreover, the female-to-male earnings ratio for women and men working full-time, year-round in all occupations increased from 59 percent in 1970 to 78 percent in 2013.[27]

In addition, employer-provided insurance policies that explicitly provide lower-value or otherwise less comprehensive hospitalization or disability benefits for childbirth than for other medical conditions are unlawful for employers of 15 or more employees.[28] Generous leave and other family-friendly policies are increasingly common. As early as 2000, even employers that were not covered by the FMLA routinely extended leave to their employees for FMLA-covered reasons: Two-thirds of such employers provided leave for an employee's own serious health condition and for pregnancy-related disabilities, and half extended leave to care for a newborn child.[29] Eleven percent of employees have access to paid family leave, and most employees receive some pay during family and medical leave due to paid vacation, sick, or personal leave or temporary disability insurance.[30]

While these changes in policies and practices show a measure of progress, there is no doubt that sex discrimination remains a significant and pervasive problem. Indeed, the percentage of total annual EEOC charges that allege sex discrimination has remained nearly constant at around 30 percent since at least 1997.[31]

Additionally, occupational sex segregation remains widespread:

> In 2012, nontraditional occupations for women employed only six percent of all women, but 44 percent of all men. The same imbalance holds for occupations that are nontraditional for men; these employ only 5 percent of men, but 40 percent of women. Gender segregation is also substantial in terms of the broad sectors where men and women work: Three in four workers in education and health services are women, nine in ten workers in the construction industry and seven in ten workers in manufacturing are men.[32]

Likewise, women continue to be underrepresented in higher level or more senior jobs within occupations. For example, in 2013, women were represented in only 38 percent of all manager positions.[33] Women also accounted for only 27 percent of chief executive officer positions.[34]

As mentioned above, in 2013, women working full time earned 78 cents on the dollar compared with men, measured on the basis of median annual earnings.[35] While this represents real progress, and discrimination may not be the cause of the entire gap, more than fifty years after passage of the Equal Pay Act, the size of the gap is still unacceptable. At the current rate of progress, researchers estimate it will take until 2057 to close the gender pay gap.[36]

The wage gap is also greater for women of color and women with disabilities. When measured by median full-time weekly earnings, in 2013 African-American women made approximately 69 cents and Latinas made approximately 61 cents for every dollar earned by a non-Hispanic, white man.[37] In 2013, median annual earnings for women with disabilities were only 47 percent of median annual earnings for men without disabilities.[38] Moreover, it appears that the narrowing of the pay gap has slowed since the 1990's.[39]

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[25] American Medical Association, *Women in Medicine: An AMA Timeline* 4, *available at https://download.ama-assn.org/resources/doc/wps/x-pub/wimtimeline.pdf* (last accessed May 13, 2014).

[26] Bureau of Labor Statistics, U.S. Department of Labor, *Labor Force Statistics from the Current Population Survey,* Table 11, Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity, Household Data Annual Averages, *available at http://www.bls.gov/cps/cpsaat11.htm* (last accessed June 5, 2014) [hereinafter BLS Labor Force Statistics 2013].

[27] U.S. Census Bureau, *Income and Poverty in the United States: 2013,* Current Population Reports 10 (2014), Table A–4, Number and real median earnings of total workers and full-time, year-round workers by sex and female-to-male earnings ratio: 1960–2013, *available at http://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf* (last accessed Nov. 2, 2014).

[28] These practices, common before the PDA, were prohibited when that law became effective as to fringe benefits in 1979. As the EEOC explained in guidance on the PDA issued in 1979—

> A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons. Also, any health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions.

Appendix to Part *1604*—Questions and Answers on the Pregnancy Discrimination Act, 44 FR 23805 (Apr. 20, 1979), 29 CFR part 1604. EEOC's recently issued guidance echoes this earlier interpretation and discusses recent developments on benefits issues affecting PDA compliance. U.S. Equal Opportunity Commission, Enforcement Guidance: Pregnancy Discrimination and Related Issues I.C.2–4 (July 14, 2014), *available at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm* (last accessed Oct. 3, 2014). OFCCP welcomes comments on the extent to which contractor-provided health insurance plans comply with the PDA.

[29] U.S. Department of Labor, Wage and Hour Division, *The 2000 Survey Report* ch. 5, Table 5–1. Family and Medical Leave Policies by FMLA Coverage Status, 2000 Survey Report *available at http://www.dol.gov/whd/fmla/chapter5.htm#5.1.1* (last accessed May 13, 2014).

[30] Robert Van Giezen, *Paid Leave in Private Industry over the Past 20 Years,* Bureau of Labor Statistics, U.S. Department of Labor, Beyond the Numbers: Pay & Benefits Aug. 2013, *available at http://www.bls.gov/opub/btn/volume-2/paid-leave-in-private-industry-over-the-past-20-years.htm* (last accessed Oct. 3, 2014). In addition, most employees taking family or medical leave had some access to paid leave: ''48% report[ed] receiving full pay and another 17% receive[d] partial pay, usually but not exclusively through regular paid vacation leave, sick leave, or other 'paid time off' hours.'' Jacob Klerman, Kelly Daley, & Alyssa Pozniak, Family and Medical Leave in 2012: Executive Summary ii, *http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Executive-Summary.pdf* (last accessed Oct. 3, 2014).

[31] This rate has varied from a low of 28.5 percent in FY 2011 to a high of 31.5 percent in FY 2000. U.S. Equal Employment Opportunity Commission, *Enforcement and Litigation Statistics,* Charge Statistics: FY 1997 Through FY 2013, *available at http://eeoc.gov/eeoc/statistics/enforcement/charges.cfm* (last accessed Nov. 2, 2014). In FY 2013, the EEOC received 27,687 charges alleging sex discrimination.

[32] Ariane Hegewisch & Heidi Hartmann, Institute for Women's Policy Research, Occupational Segregation and the Gender Wage Gap: A Job Half Done (2014), *available at http://www.iwpr.org/publications/pubs/occupational-segregation-and-the-gender-wage-gap-a-job-half-done* (last accessed Oct. 3, 2014) (citations omitted); see also Ariane Hegewisch et al., The Gender Wage Gap by Occupation, Fact Sheet #C350a, The Institute for Women's Policy Research, *available at http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2/at_download/file/* (last accessed Oct. 3, 2014) [hereinafter IWPR Wage Gap By Occupation].

[33] BLS Labor Force Statistics 2013, *supra* note 26.

[34] *Id.*

[35] U.S. Census Bureau, *Income and Poverty in the United States: 2013,* Current Population Reports 10 (2014), *available at http://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf* (last accessed Nov. 2, 2014).

[36] Institute for Women's Policy Research, *At Current Pace of Progress, Wage Gap for Women Expected to Close in 2057* (April 2013), *available at http://www.iwpr.org/publications/pubs/at-currentpace-of-progress-wage-gap-for-women-expected-toclose-in-2057.*

[37] Bureau of Labor Statistics, U.S. Department of Labor, *Household Data, Annual Averages,* Table 37. ''Median Weekly Earnings of Full-Time Wage and Salary Workers By Selected Characteristics'' *available at http://www.bls.gov/cps/cpsaat37.pdf* (last accessed Oct. 6, 2014).

[38] Calculation from U.S. Census Bureau, American Fact Finder, ''Median earnings in the past 12 months (in 2013 inflation-adjusted dollars) by disability status by sex for the civilian noninstitutionalized population 16 years and over with earnings,'' *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_B18140&prodType=table* (last accessed Nov. 6, 2014).

[39] From 1980 to 1989, the percentage of women's earnings relative to men's increased from 60.2% to 66.0%; from 1990 to 1999, the percentage increased from 71.6% to just 72.2%. U.S. Census Bureau, *Historical Income Tables: People,* Table P–40: Women's Earnings as a Percentage of Men's Earnings by Race and Hispanic Origin, *available at https://www.census.gov/hhes/www/income/data/historical/people/* (last accessed Nov. 2, 2014). *See*

These disparities can be explained to some extent by differences in experience, occupation, and industry.[40] However, decades of research show these wage gaps remain even after accounting for factors like the type of work people do and qualifications such as education and experience.[41] Moreover, while some women may work fewer hours or take time out of the workforce because of family responsibilities, there is research suggesting that discrimination and not just choices can lead to women with children earning less;[42] to the extent that the potential explanations such as type of job or amount of continuous labor market experience are also influenced by discrimination, the ''unexplained'' difference may understate the true effect of sex discrimination.[43]

Male-dominated occupations generally pay more than female-dominated occupations at similar skill levels. But even within the same occupation, women earn less than men on average. For example, in 2012, full-time women auditors' and accountants' earnings were less than 74 percent of the earnings of their male counterparts.[44] Retail salespersons faced the largest wage gap, among whom women made only 64 percent of what men made.[45] Likewise, in the medical profession, women earn less than their male counterparts. On average, male physicians earn 13 percent more than female physicians at the outset of their careers and as much as 28 percent more eight years later.[46] This gap could not be explained by practice type, work hours, or other characteristics of employees' work situations.[47]

Despite enactment of the PDA, women continue to report that they have experienced discrimination on account of pregnancy. Between FY 1997 and FY 2011, the number of charges of pregnancy discrimination filed with the EEOC and state and local agencies was significant, ranging from a low of 3,977 in 1997 to a high of 6,285 in 2008.[48] A 2011 review of reported ''family responsibility discrimination'' cases (brought by men as well as women) found that low-income workers face ''extreme hostility to pregnancy.''[49]

In addition, some pregnant workers face a serious and unmet need for workplace accommodations, which are vital to their uninterrupted, seamless, and continued employment and, ultimately, to their health and that of their children. OFCCP is aware of a number of situations in which women have been denied accommodations with deleterious health consequences. For example:

In one instance, a pregnant cashier in New York who was not allowed to drink water during her shift, in contravention of her doctor's recommendation to stay well-hydrated, was rushed to the emergency room after collapsing at work. As the emergency room doctor who treated her explained, because ''pregnant women are already at increased risk of fainting (due to high progesterone levels causing blood vessel dilation), dehydration puts them at even further risk of collapse and injury from falling.'' Another pregnant worker was prohibited from carrying a water bottle while stocking grocery shelves despite her doctor's instructions that she drink water throughout the day to prevent dehydration. She experienced preterm contractions, requiring multiple hospital visits and hydration with IV fluids. . . . [Another] woman, a pregnant retail worker in the Midwest who had developed a painful urinary tract infection, supplied a letter from her doctor to her employer explaining that she needed a short bathroom break more frequently than the store's standard policy. The store refused. She later suffered another urinary tract infection that required her to miss multiple days of work and receive medical treatment.[50]

''Pregnant workers in physically demanding, inflexible, or hazardous jobs are particularly likely to need accommodations at some point during their pregnancies to continue working safely.''[51] Meanwhile, more women

also Youngjoo Cha & Kim A Weeden, *Overwork and the Slow Convergence in the Gender Gap in Wages,* Am. Soc. Rev. 1–28 (2014), *available at http://www.asanet.org/journals/ASR/ChaWeeden June14ASR.pdf* (last accessed Nov. 2, 2014); Francine D. Blau & Lawrence M. Kahn, *The U.S. Gender Pay Gap in the 1990s: Slowing Convergence,* 60 Indus. & Lab. Rel. Rev. 45 (2006) [hereinafter Slowing Convergence].

[40] *Equal Pay for Equal Work? New Evidence on the Persistence of the Gender Pay Gap: Hearing Before United States Joint Economic Comm.,* Majority Staff of the Joint Econ. Comm., 111th Cong., Invest in Women, Invest in America: A Comprehensive Review of Women in the U.S. Economy 80 (Comm. Print 2010), 80, *available at http://jec.senate.gov/public/?a=Files.Serve&File_id=9118a9ef-0771-4777-9c1f-8232fe70a45c* (last accessed Oct. 3, 2014) (statement of Randy Albelda, Professor of Economics and Senior Research Associate, University of Massachusetts-Boston Center for Social Policy).

[41] A March 2011 White House report entitled Women in America: Indicators of Social and Economic Well-Being, found that while earnings for women and men typically increase with higher levels of education, male-female pay gap persists at all levels of education for full-time workers (35 or more hours per week), according to 2009 BLS wage data. Potentially nondiscriminatory factors can explain some of the gender wage differences. See, *e.g.,* June Elliot O'Neill, The Gender Gap in Wages, Circa 2000, Am. Econ. Rev. (May 2003). Even so, after controlling for differences in skills and job characteristics, women still earn less than men. Explaining Trends in the Gender Wage Gap, A Report by the Council of Economic Advisers (June 1998). Ultimately, the research literature still finds an unexplained gap exists even after accounting for potential explanations, and finds that the narrowing of the pay gap for women has slowed since the 1980s. Joyce P. Jacobsen, *The Economics of Gender* 44 (2007); *Slowing Convergence, supra* note 39.

[42] Shelley J. Correll, Stephen Benard, & In Paik, ''Getting a Job: Is There a Motherhood Penalty?'' 112 *American Journal of Sociology* 1297 (2007).

[43] *Strengthening the Middle Class: Ensuring Equal Pay for Women: Hearing Before H. Comm. on Educ. and Labor,* 110th Cong. (2007), available at *http://www.cepr.net/index.php/strengthening-the-middle-class-ensuring-equal-pay-for-women-testimony/* (last accessed Oct. 3, 2014) (statement of Heather Boushey, Senior Economist, Center for Economic and Policy Research).

[44] IWPR Wage Gap by Occupation, *supra* note 32.

[45] *Id.*

[46] Constanca Esteves-Sorenson & Jason Snyder, The Gender Earnings Gap for Physicians and its Increase Over Time 1 (2011), *available at http://faculty.som.yale.edu/ConstancaEstevesSorenson/documents/Physician_000.pdf* (last accessed October 3, 2014).

[47] *Id.* A 2008 study on physicians leaving residency programs in New York State also found a $16,819 pay gap between male and female physicians. Anthony T. LoSasso, Michael R. Richards, Chiu-Fang Chou & Susan E. Gerber, *The $16,819 Pay Gap For Newly Trained Physicians: The Unexplained Trend Of Men Earning More Than Women,* 30 Health Affairs 193 (2011), *available at http://content.healthaffairs.org/content/30/2/193.full.pdf+html* (last accessed May 13, 2014).

[48] U.S. Equal Employment Opportunity Commission, *Pregnancy Discrimination Charges,* EEOC & FEPAs Combined: FY 1997–FY 2011, *available at http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm* (last accessed Nov. 2, 2014); U.S Equal Employment Opportunity Commission, *Charge Statistics: FY 1997 Through FY 2013, available at http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm* (last accessed Nov. 2, 2014) (hereinafter ''EEOC Charge Statistics: FY 1997–2013''). FY 2011 is the last year for which comparable data are available. For FY 2012 and FY 2013, four percent of the charges filed with the EEOC alleged pregnancy discrimination. OFCCP calculations made from data from U.S Equal Employment Opportunity Commission, *Pregnancy Discrimination Charges,* FY 2010–FY 2013, *available at http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy_new.cfm* (last accessed Nov. 2, 2014) and EEOC Charge Statistics: FY 1997–2013.

[49] Stephanie Bornstein, Center for WorkLife Law, UC Hastings College of the Law, Poor, Pregnant and Fired: Caregiver Discrimination Against Low-Wage Workers 2 (2011), *available at http://worklifelaw.org/pubs/PoorPregnantAndFired.pdf* (last accessed Oct. 3, 2014).

[50] *Brief of Health Care Providers, the National Partnership for Women & Families, and Other Organizations Concerned with Maternal and Infant Health as Amici Curiae in Support of Petitioner in Young* v. *United Parcel Service,* supra, available at *http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-1226_pet_amcu_hcp-etal.authcheckdam.pdf,* at 9–10, 11 [citations omitted]. *See also Wiseman* v. *Wal-Mart Stores, Inc.,* No. 08–1244–EFM, 2009 WL 1617669 (D. Kan. June 9, 2009) (pregnant retail employee with recurring urinary and bladder infections caused by dehydration alleged she was denied permission to carry a water bottle despite doctor's note), *available at http://www.gpo.gov/fdsys/pkg/USCOURTS-ksd-6_08-cv-01244/pdf/USCOURTS-ksd-6_08-cv-01244-0.pdf.*

[51] National Women's Law Center & A Better Balance, It Shouldn't Be a Heavy Lift: Fair Treatment for Pregnant Workers 5 (2013), *available at http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf* (last accessed Dec. 30, 2014) [hereinafter Heavy Lift].

today continue to work throughout their pregnancies and therefore are more likely to need accommodations of some sort. Of women who had their first child between 1966 and 1970, 49 percent worked during pregnancy; of those, 39 percent worked into their last month. For the period from 2006 to 2008, the proportion working increased to 66 percent, and the proportion of those working into the last month increased to 82 percent.[52]

In some ways, the nature of sex discrimination has also changed since OFCCP promulgated the Sex Discrimination Guidelines. Explicit sex segregation, such as the facial ''male only'' hiring policies that part 60–20 specifically addresses, has been replaced in many workforces by less overt mechanisms that nevertheless present real equal opportunity barriers.

One of the most significant barriers is the role of sex-based stereotyping. Decades of social science research have documented the extent to which sex-based stereotypes about the roles of women and men and their respective capabilities in the workplace can influence decisions about hiring, training, promotions, pay raises, and other conditions of employment.[53] As the Supreme Court recognized in 1989, an employer engages in sex discrimination if its female employees' chances of promotion depend on whether they fit their managers' preconceived notions of how women should dress and act.[54] Research clearly demonstrates that widely held social attitudes and biases can lead to discriminatory decisions, even where there is no formal sex-based (or race-based) policy or practice in place.[55] Sex-based stereotyping may have even more severe consequences for transgender, lesbian, gay, and bisexual applicants and employees, many of whom report that they have experienced discrimination in the workplace.[56]

With the marked increase of women in the labor force, the changes in employment practices, and numerous key legal developments since 1970, the ''special problems . . . [of] implementation'' of the Executive Order's prohibition of sex discrimination referred to in current § 60–20.1 have changed significantly as well. As a result, many of the provisions in the Guidelines are outdated, inaccurate, or both. At the same time, there are important and current areas of law that the Guidelines fail to address at all. For example, while the existing regulations touch upon leave for childbearing, they are completely silent about refusals to hire pregnant women or women of childbearing age, restricted duty during pregnancy, health insurance or other benefits, and other applications of the law prohibiting pregnancy discrimination.

Section-by-Section Analysis

The NPRM recommends a quite different organization of the topics covered in current part 60–20. For example, discussion of the BFOQ defense is repeated in several different sections of the current guidelines; the proposal consolidates this discussion into one section covering BFOQs. In addition, the proposal does not address some topics that are addressed in current part 60–20 but are outdated; includes some topics that are covered by the current guidelines but in revised form to align them with current law; and adds some provisions not contained in the current guidelines to address contemporary problems with implementation.

This Section-by-Section Analysis identifies and discusses all proposed changes in each section. OFCCP welcomes comments on each of the provisions discussed below.

Title of the Regulations

The current title of part 60–20 is ''Sex Discrimination Guidelines.'' OFCCP proposes to change this title to ''Discrimination on the Basis of Sex,'' to make clear that the provisions in part 60–20 are regulations implementing Executive Order 11246 with the full force and effect of law.

Section 60–20.1 Purpose

The NPRM proposes a few minor changes to this section. First, it deletes the words ''Title and'' from the heading of current § 60–20.1, because the proposed section does not set out a title. Second, it deletes the second sentence of current § 60–20.1, which explains the reason that this part was promulgated in 1970, because the reasons for amending this part are contained in the preamble of the NPRM. Finally, the proposal modifies the last sentence of current § 60–20.1, which notifies the public that part 60–20 is ''to be read in connection with existing regulations, set forth in part 60–1 of this chapter.'' For completeness and to prevent any confusion, this change clarifies that contractors are subject to all the relevant parts related to the implementation of Executive Order 11246, by listing them specifically. Therefore, the proposed rule states that part 60–20 is to be read in conjunction with parts 60–1, 60–2, 60–3, 60–4, and 60–30 of this title.

Section 60–20.2 General Prohibitions

OFCCP proposes removing current § 60–20.2 entitled ''Recruitment and advertisement,'' which addresses both the nondiscrimination requirements related to recruiting and advertising and the BFOQ defense. Unlawful practices related to recruitment and advertising contained in current § 60–20.2 are subsumed in a new subparagraph of this section. *See* proposed paragraph 60–20.2(b)(7). The BFOQ defense is now addressed in proposed § 60–20.3.

In place of current § 60–20.2, OFCCP proposes a new section entitled ''General prohibitions.'' Paragraph (a) of this new section articulates the general prohibition against sex discrimination in employment. Paragraph (b) expressly prohibits disparate treatment discrimination; subparagraphs (b)(1) through (b)(10) apply the general prohibition of disparate treatment discrimination to specific practices. Paragraph (c) prohibits discrimination under disparate impact analysis.

The general statement prohibiting sex discrimination in paragraph (a) clarifies that discrimination based on pregnancy,

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[52] U.S. Census Bureau, Maternity Leave and Employment Patterns of First-Time Mothers: 1961–2008 4, 7 (2011), *available at http://www.census.gov/prod/2011pubs/p70-128.pdf* (last accessed Nov. 2, 2014) (tables 1 and 3).

[53] *See, e.g.,* Susan Fiske et al., *Controlling Other People: The Impact of Power on Stereotyping,* 48 a.m. Psychol. 621 (1993); Marzarin Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem and Stereotypes,* 102 Psychol. Rev. 4 (1995); Brian Welle & Madeline Heilman, *Formal and Informal Discrimination Against Women at Work* in *Managing Social and Ethical Issues in Organizations* 23 (Stephen Gilliland, Dirk Douglas Steiner & Daniel Skarlicki eds., 2007); Susan Bruckmüller et al., *Beyond the Glass Ceiling: The Glass Cliff and Its Lessons for Organizational Policy,* 8 Soc. Issues & Pol. Rev. 202 (2014) (describing the role of sex-based stereotypes in the workplace).

[54] *Price Waterhouse* v. *Hopkins,* 490 U.S. 228 (1989). Men, too, can experience adverse effects from sex-based stereotyping.

[55] *See, e.g.,* Kevin Lang & Jee-Yeon K. Lehmann, *Racial Discrimination in the Labor Market: Theory and Empirics* (NBER Working Paper No. 17450, 2010), *available at http://128.197.153.21/jee/Lang_Lehmann_jel_disc.pdf* (last accessed Oct. 3, 2014); Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Brendan More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination,* 94(4) American Econ. Rev. (2004); Ian Ayres & Peter Siegelman, *Race and Gender Discrimination in Bargaining for a New Car,* 85(3) Am. Econ. Rev. (1995); Marc Bendick, Charles Jackson & Victor Reinoso, *Measuring Employment Discrimination Through Controlled Experiments,* 23 Rev. of Black Pol. Econ. 25 (1994).

[56] Injustice at Every Turn, *supra* note 13; Brad Sears & Christy Mallory, The Williams Institute, Documented Evidence of Employment Discrimination & Its Effects on LGBT People (2011), *available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-20111.pdf* (last accessed Nov. 5, 2014). Further discussion of discrimination on the basis of sexual orientation and gender identity can be found *infra* in the passages on § 60–20.2(a) and § 60–20.7.

childbirth, or related medical conditions is a form of sex discrimination. This principle has been the law since Congress enacted the Pregnancy Discrimination Act amendments to title VII in 1978. This form of discrimination is also treated separately in proposed § 60–20.5.

In addition, paragraph (a) clarifies that discrimination based on gender identity or transgender status is also a form of sex discrimination. *See* OFCCP Directive 2014–02, ''Gender Identity and Sex Discrimination'' (August 19, 2014). As Directive 2014–02 explains, ''Under current Title VII case law principles, discrimination based on gender identity or transgender status . . . is discrimination based on sex.'' The Directive relied on the EEOC's decision in *Macy* v. *Holder,* 2012 WL 1435995 (EEOC April 20, 2012), in which the EEOC commissioners unanimously concluded that discrimination because a person is transgender is sex discrimination in violation of title VII, by definition, because the discriminatory act is ''related to the sex of the victim.'' [57] The EEOC cited both the text of title VII and the reasoning in *Schroer* v. *Billington,* 577 F. Supp. 2d 293 (D.D.C. 2008), for its conclusion.[58] See also Memorandum from Attorney General Eric Holder to United States Attorneys and Heads of Department Components (Dec. 15, 2014) (citing EEOC's decision in *Macy* v. *Holder* as support for DOJ's positon that ''[t]he most straightforward reading of Title VII is that discrimination 'because of . . . sex' includes discrimination because an employee's gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex''). Note that discrimination on the basis of gender identity or transgender status can arise regardless of whether a transgender individual has undergone, is undergoing, or plans to undergo sex-reassignment surgery or other processes or procedures designed to facilitate the adoption of a sex or gender other than the individual's designated sex at birth.

Many of the examples included in this proposed section are presently listed in § 60–20.3, ''Job policies and practices,'' of the current part 60–20. For instance, proposed paragraph 60–20.2(b)(1) identifies making a distinction between married and unmarried persons that is not applied equally to both sexes as an example of a sex-based discriminatory practice, and proposed paragraph 60–20.2(b)(2) provides that denying women with children an employment opportunity that is available to men with children is an unlawful sex-based discriminatory practice. These proposed provisions can be found in current paragraph 60–20.3(d).

Other examples of practices listed in this proposed rule that, absent a BFOQ, would constitute sex-based discriminatory treatment include: Treating unmarried female parents differently than unmarried male parents (proposed paragraph 60–20.2(b)(3)); imposing differences in retirement age or other terms, conditions, or privileges of retirement based on sex (proposed paragraph 60–20.2(b)(4)); restricting job classifications on the basis of sex (proposed paragraph 60–20.2(b)(5)); maintaining seniority lines and lists based on sex (proposed paragraph 60–20.2(b)(6)); recruiting or advertising for members of one sex for a certain job, including through use of gender-specific terms for jobs (proposed paragraph 60–20.2(b)(7)); and distinguishing on the basis of sex in apprenticeship or other formal or informal training programs; in other opportunities such as networking, mentoring, sponsorship, individual development plans, rotational assignments, and succession planning programs; and in performance appraisals that may provide the basis of subsequent opportunities (proposed paragraph 60–20.2(b)(8)). Specific enumeration of these types of programs ensures that the forms of career development and advancement opportunities that contractors currently use are included.

Proposed paragraph 60–20.2(b)(9) states that making any facilities or employment-related activities available only to members of one sex is an example of an unlawful sex-based discriminatory practice, with the condition that if a contractor provides restrooms or changing facilities, the contractor must provide separate or single-user restrooms or changing facilities to assure privacy between the sexes.[59]

This proposed paragraph replaces current § 60–20.3(e), which requires contractors to provide ''appropriate physical facilities'' to both men and women ''unless the employer is able to show that the construction of the facilities would be unreasonable for such reasons as excessive expense or lack of space.'' Under existing law, unreasonable cost is not acceptable as a defense to sex discrimination in employment.[60] Moreover, current § 60–20.3(e) is inconsistent with other OFCCP regulations, which require contractors to provide separate or single-user restrooms and changing facilities to assure privacy between the sexes without exception for cost or lack of space. *See* 41 CFR 60–1.8 (supply and service contractors); 41 CFR 60–4.3(a) 7n (construction contractors).[61]

Proposed paragraph 60–20.2(b)(10) describes another example of sex-based discriminatory practices: Denying transgender employees access to the bathrooms used by the gender with which they identify.

Proposed paragraph 60–20.2(b)(11) addresses discrimination against transgender individuals who have undergone, are undergoing, or plan to undergo sex-reassignment surgery or other processes or procedures designed to facilitate the adoption of a sex or gender other than the individual's designated sex at birth. Disparate treatment for this reason has been classified as both discrimination on the basis of sex-based stereotypes and as discrimination on the basis of sex. *Schroer* v. *Billington, supra,* at 304–08 (D.D.C. 2008) (concluding that an employer's decision to withdraw a job offer from a transgender applicant

[57] *Macy* at *7. Macy also held that discrimination on the basis of transgender status could be unlawful under title VII as sex stereotyping. That form of sex stereotyping is separately addressed in proposed § 20.7.

[58] Consistent with *Macy,* this NPRM defines discrimination on the basis of gender identity as a form of sex discrimination. Gender identity is also a stand-alone protected category (along with sexual orientation) under Executive Order 13672. Executive Order 13672 amends Executive Order 11246 to add sexual orientation and gender identity as protected bases, and applies to contracts entered into or modified on or after April 8, 2015, the effective date of the implementing regulations promulgated thereunder.

[59] This provision aligns with an existing affirmative action requirement applicable to Federal and federally-assisted construction contractors at 41 CFR 60–4.3(a) 7n (''Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.'').

[60] See *Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am.* v. *Johnson Controls, Inc.,* 499 U.S. 187, 210–11 (1991), in which the plaintiff challenged defendant's policy prohibiting women of childbearing age from working in jobs involving exposure to lead because of potential health dangers to fetuses that they may be carrying. The Supreme Court held that the cost of eliminating the health dangers cannot be a BFOQ that justifies the exclusion of women workers.

[61] In addition, OSHA regulations require employers to provide employees with toilets, except for ''mobile crews, which must have] ''transportation readily available to nearby toilet facilities.'' 29 CFR 1926.51(c) (OSHA construction sanitation standard); OSHA Standard Interpretation regarding 29 CFR 1926.51(c) (June 7, 2002), *https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=24369* (interpreting the provision pertaining to mobile crews as requiring prompt access to toilets that are less than 10 minutes away and recognizing that women may need bathroom facilities more often than men).

constituted both sex-stereotyping discrimination and sex discrimination in violation of title VII). The EEOC has recognized this principle as well. *Macy* v. *Holder, supra.*

Finally, proposed paragraph 60–20.2(c) provides that employment policies or practices that state a claim of disparate impact discrimination violate Executive Order 11246 and the regulations at 41 CFR part 60–20. Proposed paragraph 60–20.2(c) identifies several examples of employment practices that may have an adverse impact on women. Traditionally, disparate impact claims have involved selection criteria that are not necessary to the performance of the job, but which instead reflect stereotypical notions about the skills required for the position in question. *See, e.g., Blake* v. *City of Los Angeles,* 595 F.2d 1367 (9th Cir. 1979) (striking down height requirements by the Los Angeles police department because they were not job related and had a disparate impact on women, who in general are shorter than men); *EEOC* v. *Dial Corp.,* 469 F.3d 735 (8th Cir. 2006) (striking down a strength test used in a sausage factory because the test was more physically demanding than the job in question and had a significant disparate impact on women). This sex discrimination analysis may also apply to policies or practices that are unrelated to selection procedures. For instance, an employer policy requiring crane operators to urinate off the back of the crane instead of using a restroom was held to be a neutral employment policy that was not justified by business necessity and that produced an adverse effect on women, who, the court found, have ''obvious anatomical and biological differences'' that require the use of bathrooms. *Johnson* v. *AK Steel Corp.,* 2008 WL 2184230, *8 (S.D. Oh. May 23, 2008).

Section 60–20.3 Sex as a Bona Fide Occupational Qualification

OFCCP proposes removing current § 60–20.3 entitled ''Job policies and practices,'' which addresses a variety of topics, including a contractor's general obligations to ensure equal opportunity in employment on the basis of sex (paragraphs 60–20.3(a), 60–20.3(b), and 60–20.3(c)); provides examples of discriminatory treatment (paragraph 60–20.3(d)); and sets forth contractor obligations with respect to the provision of physical facilities, including bathrooms (paragraph 60–20.3(e)), the impact of state protective laws (paragraph 60–20.3(f)), leave for childbearing (paragraph 60–20.3(g)), and specification of retirement age (paragraph 60–20.3(h)). Current paragraph 60–20.3(i) clarifies that differences in capabilities for job assignments among individuals may be recognized by the employer in making specific assignments.

As explained earlier in the preamble, OFCCP proposes moving the general obligation to ensure equal employment opportunity and the examples of discriminatory treatment to proposed § 60–20.2. To improve coherence and clarity, OFCCP proposes to move (and revise in some instances) the remaining obligations set forth in paragraphs (e) through (i) to their own separate sections or to incorporate them as illustrations of discriminatory treatment in proposed § 60–20.2.

Specifically, current paragraph 60–20.3(e) regarding provision of physical facilities is now addressed in proposed § 60–20.2. See the discussion earlier in this preamble for information regarding this proposed provision.

Current paragraph 60–20.3(f), which addressed state protective laws, has been removed entirely because it is unnecessary and anachronistic. While in 1970 there may have been some legal question whether state protective laws provided a defense to discriminatory employment policies, in 2014 it is beyond dispute that they do not. See *Int'l Union, United Auto., Aerospace and Agr. Implement. Workers of Am.* v. *Johnson Controls, Inc., supra* (holding that possible reproductive health hazards to women of childbearing age did not justify sex-based exclusions from certain jobs). Proposed paragraph 60–20.2(b)(5), prohibiting sex-based job classifications, clearly states the underlying principle that no job, absent a job-specific BFOQ, is the separate domain of any sex. OFCCP invites comment from stakeholders as to the current scope of state protective laws, whether those that exist are enforced, and what practical effect, if any, they have on contractors.

Current paragraph 60–20.3(g) regarding leave for childbearing is now addressed in its own section: discrimination on the basis of pregnancy, childbirth, or related medical conditions. See the discussion of proposed § 60–20.5 later in this preamble.

Current paragraph 60–20.3(h) prohibits differential treatment between men and women with regard to retirement age. It is restated and broadened, prohibiting the imposition not only of sex-based differences in retirement age but also in ''other terms, conditions, or privileges of retirement,'' in proposed paragraph 60–20.2(b)(4). OFCCP invites comments on whether such differential treatment continues today.

Current paragraph 60–20.3(i) states, in its first sentence, that the Sex Discrimination Guidelines allow contractors to recognize differences in capabilities for job assignments in making specific assignments. The second sentence reiterates that the purpose of the guidelines ''is to insure that such distinctions are not based upon sex.'' This paragraph is omitted from the proposal because it is unnecessary and because its second sentence is repetitive of proposed § 60–20.1. Implicit in the provisions prohibiting discrimination on the basis of sex is the principle that distinctions for other reasons, such as differences in capabilities, are not prohibited.[62] Making distinctions among employees based on their relevant job skills, for example, does not constitute unlawful discrimination.

Proposed § 60–20.3 entitled ''Sex as a *bona fide* occupational qualification'' is new and consolidates in one provision the current references to the BFOQ defense available to employers in paragraphs 60–20.3(b) and 60–20.3(f)(2), and adopts the BFOQ language set forth in title VII, 42 U.S.C. 2000e–2(e).

OFCCP expects that this proposed reorganization will make the regulations more user-friendly and will help facilitate a better understanding of the Executive Order requirements with respect to sex discrimination.

Section 60–20.4 Discriminatory compensation

Current § 60–20.4 relating to seniority systems would be removed because its subject matter—the interaction of seniority systems and sex discrimination—is addressed in proposed § 60–20.2 at paragraph (b)(6).

Proposed § 60–20.4 would replace the current requirements related to discriminatory wages in current § 60–20.5. In general, the existing text focuses on particular kinds of jobs and fact patterns that may have posed significant limitations on equal opportunity in compensation at the time the Guidelines were adopted. However, the continued increase of women into the workforce, their robust participation in a wide variety of occupations and positions, ranging from entry-level to senior management, and the significant representation of women in both the hourly and salaried workforce require a more comprehensive statement

[62] Of course, discrimination based on other reasons that are independently prohibited by law—such as race, religion, color, national origin, disability, sexual orientation, gender identity, and protected veteran status—is prohibited.

addressing sex discrimination in wages and other terms of compensation.

For example, paragraph (a) of current § 60–20.5 provides only a cursory description of sex discrimination in wages and other forms of compensation and fails to give useful guidance to contractors in evaluating their compensation programs for potential sex discrimination. The one clarifying example provided in the Note in current § 60–20.5(a) tracks the Equal Pay Act rather than title VII. OFCCP enforces the Executive Order's nondiscrimination provisions, including the ban on compensation discrimination, consistent with title VII. Courts have concluded that title VII uses a broader and more flexible approach to comparing jobs and defining similarly situated workers than the Equal Pay Act, *see, e.g., Cnty. of Washington* v. *Gunther,* 452 U.S. 161 (1981); *Miranda* v. *B & B Cash Grocery,* 975 F.2d 1518 (11th Cir. 1992). For that reason, the Note has the potential to create unnecessary confusion, and the proposed rule omits it entirely.

Similarly, current paragraph (b) appears to contemplate only workplaces that are completely or explicitly segregated by gender. However, title VII also bars other, more subtle forms of discriminatory compensation that can result from *de facto* job segregation or classification on the basis of sex. For example, a retail chain might disproportionately steer women into lower paying cashier jobs—even though the women are qualified and available for higher paying positions—based on the outdated, stereotypical notion that men, and not women, are the primary wage earners. These forms of discriminatory compensation remain a potential concern that should be, and are, addressed by the proposed regulation.

Current paragraph (c) has been superseded by the transfer of Equal Pay Act jurisdiction to the EEOC and is therefore removed.

The proposed new text in § 60–20.4 provides a clearer general statement of the contractor's obligation to provide equal opportunity with respect to wages and other forms of compensation. The Executive Order and the implementing regulations specifically require contractors to ensure pay equity. Thus, Federal contractors have affirmative duties to maintain data, conduct internal reviews, and monitor pay practices for potential discrimination, as well as comply with the Executive Order's ban on discrimination in the payment of wages, salaries, and other forms of compensation.[63] The section generally restates the agency's case-specific approach to evaluating contractor pay systems and practices for sex discrimination, where the agency tailors the investigative and analytic methods to the facts of the case.[64] This may include conducting multiple regression analyses and applying other formal statistical tests as well as using comparative and circumstantial evidence. As this approach is grounded in well-established principles of title VII law,[65] it also would apply when evaluating contractor pay systems and practices for discrimination based on other protected categories.

Furthermore, OFCCP does not require anecdotal evidence to support a pay violation. Identifying individuals harmed by pay discrimination is particularly difficult.[66] Many workers do not know that they are underpaid.[67] If OFCCP finds evidence of pay discrimination by Federal contractors through its review of data, the agency should not permit that discrimination to continue simply because the contractor had successfully hidden it from its employees. Federal contractors have special obligations to avoid discrimination, monitor their pay practices and submit to reviews to make certain they are in compliance, regardless of whether any individual applicant or employee actually has knowledge of discrimination.

Section 60–20.4 substitutes the general and more modern term ''compensation'' for the outdated term ''wage schedules'' and clarifies that both systemic and individual forms of such discrimination are barred by the Executive Order. Proposed amendments to Section 60–1.3 to implement Executive Order 13655 would define compensation as follows:

> *Compensation* means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and contributions to retirement.

That same definition would apply to any assessment of compensation discrimination under EO 11246, including when evaluating sex discrimination in compensation under this section.

To provide more guidance to contractors about the kinds of practices they should review and analyses they should undertake to assess their compliance, new paragraphs (a), (b), and (c) specify a variety of ways pay discrimination may occur. For example, proposed paragraph (a) states that contractors may not pay different compensation to similarly situated employees on the basis of sex. Proposed paragraph (b) prohibits contractors from, among other things, granting or denying training, work assignments, or other opportunities that may lead to advancement on the basis of sex, and proposed paragraph (c) states that contractors may not provide or deny earnings opportunities because of sex, for example by denying women equal opportunity to obtain regular and/or overtime hours, commissions, pay increases, incentive compensation, or any other additions to regular earnings.

The revised text in proposed paragraph (a) also addresses the question of determining ''similarly situated'' employees for purposes of analyzing compensation differences. The determination of similarly situated employees is case specific. Relevant factors in determining similarity may include tasks performed, skills, effort, levels of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors. In some cases, employees are similarly situated where they are comparable on some of these factors, even if they are not similar in other

[63] Section 202 of Executive Order 11246, as amended; 41 CFR 60–1.12; 60–1.4; 60–2.17(b)–(d).

[64] OFCCP's case-by-case investigation procedures implement the title VII principles applicable to enforcing discrimination in any employment practice under Executive Order 11246. The agency provides this very general description of its approach for purposes of clarification and consistency with its other statements of policy in this area.

[65] Interpreting Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Compensation Discrimination and Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance with Nondiscrimination Requirements of Executive Order 11246 with Respect to Systemic Compensation Discrimination: Notice of Final Rescission, 78 FR 13508, Feb. 28, 2013 (hereinafter Notice of Rescission).

[66] *Ledbetter* v. *Goodyear Tire & Rubber Co.,* 550 U.S. 618, 645 (2007) (Ginsburg, J., dissenting).

[67] On April 8, 2014, President Obama issued Executive Order 13655, which provides that a Federal contractor may not discharge or otherwise discriminate against any employee or applicant because such person has inquired about, discussed, or disclosed the compensation of the person or another employee or applicant. OFCCP published an NPRM on Sept. 17, 2014 to implement this executive order. 79 FR 55712. The comment period closed on Dec. 16, 2014.

[68] In employment discrimination cases, courts generally consider whether the workers being compared are similar in aspects relevant to the case. *See, e.g., McGuinness* v. *Lincoln Hall,* 263 F.3d 49, 53–54 (2d Cir. 2001); *Ercegovich* v. *Goodyear Tire and Rubber Co.,* 154 F.3d 344 (6th Cir. 1998); *McNabola* v. *Chicago Transit Authority,* 10 F.3d 501 (7th Cir. 1993).

factors.[68] For example, when evaluating a job assignment issue, workers are similarly situated when their qualifications are comparable, but they are assigned to jobs at different levels.[69] Employees are similarly situated when they are comparable on factors relevant to the compensation issues presented. Identification of similarly situated employees for purposes of an individual analysis or review of a single specific employment decision may be determined based on different criteria than when conducting a systemic discrimination analysis. In analyzing compensation, title VII permits comparing workers within the same or similar jobs or within specific units or locations, and also permits consideration of pay differences more broadly—for example, across jobs or locations or units—as long as the workers are comparable under the employer's wage or salary system.[70]

New paragraph (d) prohibits contractors from implementing compensation practices, including performance review systems, that discriminate on the basis of sex under the disparate impact analysis of discrimination.[71] New paragraph (e) restates longstanding OFCCP principles regarding the circumstances under which pay discrimination is a continuing violation under the Executive Order.

Section 60–20.5 Discrimination on the Basis of Pregnancy, Childbirth, or Related Medical Conditions

Current § 60–20.5 entitled ''Discriminatory wages'' has been revised and moved to § 60–20.4 as discussed earlier in the preamble.

This proposed section is new; however, it incorporates certain obligations already set forth in the current part 60–20 at paragraph 60–20.3(g) regarding the provision of leave to employees who require time away from work on account of childbearing.

Proposed paragraph (a) of this section incorporates the principle set forth in the Pregnancy Discrimination Act that discrimination on the basis of sex includes ''because of or on the basis of pregnancy, childbirth, or related medical conditions.'' It requires that contractors treat employees and job applicants of childbearing capacity and those affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes as other persons not so affected but similar in their ability or inability to work and defines the term ''related medical conditions.'' Further, it incorporates the provision in the PDA, codified in 42 U.S.C. 2000e(k), that exempts employers from having to pay for health insurance benefits for abortion ''except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion,'' and the further proviso that nothing in that exemption ''preclude[s] a contractor from providing abortion benefits or otherwise affect[s] bargaining agreements in regard to abortion.''

Proposed paragraph (b) sets forth some of the most common applications of the general principle of nondiscrimination on the basis of pregnancy, childbirth, or related medical conditions. These examples include refusing to hire applicants because of pregnancy or childbearing capacity (paragraph (b)(1)); firing employees or requiring them to go on leave because they become pregnant or have a child (paragraph (b)(2)); limiting a pregnant employee's job duties based on pregnancy or requiring a doctor's note in order for the employee to continue employment while pregnant (paragraph (b)(3)); and providing employees with health insurance that does not cover hospitalization and other medical costs for pregnancy, childbirth, or related medical conditions, including contraception coverage, to the same extent that such costs are covered for other medical conditions (paragraph (b)(4)).

Paragraph (b)(5) includes, as another common example of discrimination based on pregnancy, childbirth, or related medical conditions, failure to provide reasonable workplace accommodations to employees affected by such conditions when such accommodations are provided to other workers similar in their ability or inability to work.[72] Without such workplace accommodations, many pregnant workers are forced to go on leave. Unfortunately, insufficient job-protected leave, time-limited temporary disability insurance, and minimal sick leave often fail to cover the entire period of pregnancy-related work limitations. Consequently, some pregnant workers who need reasonable accommodations lose their jobs, wages, and health care coverage.[73]

The range of accommodations to address the temporary limitations of a pregnant worker may include simple things that involve little or no cost, such as permitting more frequent bathroom breaks and allowing the pregnant worker to sit down during a shift.[74] Other temporary limitations, however, may require a temporary light-duty assignment to accommodate lifting or bending restrictions that a pregnant worker may have.

Denying an alternative job assignment, modified duties, or other accommodations to a pregnant employee who is temporarily unable to perform some job duties because of pregnancy, childbirth, or a related medical condition is sex discrimination when such assignments, modifications, or other accommodations are provided, or are required to be provided, by a contractor's policy or other relevant laws, to other employees whose abilities to perform some of their job duties are similarly affected (paragraph (b)(5)). Thus, for example, a contractor that permits light-duty assignments for employees who are unable to work their regular assignments due to on-the-job injuries or disabilities must also permit light-duty assignments for employees who are unable to work their regular assignments due to pregnancy. The approach set forth here with respect to pregnancy accommodation is intended to align OFCCP's regulations implementing Executive Order 11246 with EEOC guidance in this area and with the position taken by the Federal government in *Young* v. *United Parcel Serv., Inc.,* 707 F.3d 437 (4th Cir. 2013), *cert. granted* (U.S. No. 12–1226, July 1, 2014), a case currently before the Supreme Court. Should the Supreme Court rule contrary to our interpretation, OFCCP's final rule will be revised consistent with the ruling.

The EEOC has long interpreted the PDA in this way, stating as early as 1979

[69] *See, e.g., Beckman* v. *CBS,* 192 FRD. 608 (D. Minn. 2000); *Stender* v. *Lucky Stores,* 803 F.Supp. 259 (N.D. Cal. 1992); *OFCCP* v. *St. Regis Corp.* 78–OFC–1, ALJ's Recommended Decision (Dep't. of Labor Dec. 28, 1984).

[70] Notice of Rescission, *supra* note 65, 78 FR at 13511–13513.

[71] *Lewis* v. *City of Chicago,* 560 U.S. 205, 212 (2010) (finding title VII places no limit on the types of employment practices that may be challenged under disparate impact analysis).

[72] This is true even though ''pregnancy itself is not an impairment within the meaning of the [Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* as amended], and thus is never on its own a disability.'' EEOC, *Enforcement Guidance: Pregnancy Discrimination and Related Issues, sec. II.A* (July 14, 2014) (footnote omitted), available at *http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm* (last accessed December 12, 2014).

[70] Notice of Rescission, *supra* note 65, 78 FR at 13511–13513.

[72] This is true even though ''pregnancy itself is not an impairment within the meaning of the [Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* as amended], and thus is never on its own a disability.'' EEOC, *Enforcement Guidance: Pregnancy Discrimination and Related Issues, sec. II.A* (July 14, 2014) (footnote omitted), available at *http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm* (last accessed December 12, 2014).

[73] Heavy Lift, *supra* note 51, at 1, 4, 6, 8, 9–10, 11, 15, 18.

that ''[a]n employer is required to treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition *in the same manner as it treats other temporarily disabled employees.''* 29 CFR pt. 1604, App. ¶ 5 (emphasis added). It reaffirmed this position in its 2014 PDA enforcement guidance. EEOC, *Enforcement Guidance: Pregnancy Discrimination and Related Issues* I.C.1.b (July 14, 2014), *http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; see also* 9 CFR pt. 1604, App. ¶ 5 (''[a]n employer is required to treat an employee temporarily unable to perform the functions of her job because of her pregnancy-related condition *in the same manner as it treats other temporarily disabled employees.''*) (emphasis added); *id.* (''If other employees temporarily unable to lift are relieved of these functions, pregnant employees also unable to lift must be temporarily relieved of the function.'').

As the Government has argued in its brief before the Supreme Court in *Young,* nothing in the plain language of the PDA or any EEOC guidance suggests that the underlying reason for the inability to work is relevant; as long as the employees are ''similar in their inability to work,'' those affected by pregnancy, childbirth, or related medical conditions must be provided the same accommodation as those not so affected, regardless of the reasons for the inability to work. *See* Brief for the United States as *Amicus Curiae* Supporting Petitioner in *Young* v. *United Parcel Service, Inc.,* No. 12–1226 (U.S.), 2014 WL 4536939, at *16 (''Nothing in the PDA indicates that a pregnant employee faces discrimination . . . only when she receives less favorable treatment than every other employee who is similar in his or her ability or inability to work. The plain text of the statute prohibits treating pregnant employees less favorably (for any 'employment-related purpose[ ]') than 'other persons not so affected but similar in their ability or inability to work.''') (citation omitted); *id.* at *26 (''Recognizing that petitioner has established a violation of the PDA is consistent with the longstanding position of the EEOC.'').[75] *See also International Union* v. *Johnson Controls, Inc.,* 499 U.S. 187, 204–05 (1991) (''[u]nless pregnant employees differ from others *in their ability or inability to work,* they must be treated the same as other employees *for all employment-related purposes''* (citation and internal quotation marks omitted; emphases added)); *Ensley-Gaines* v. *Runyon,* 100 F.3d 1220 (6th Cir. 1996); *Raciti-Hur* v. *Homan,* No. 98–1218, 1999 U.S. App. LEXIS 9551, 1999 WL 331650 (6th Cir. May 13, 1999) (unpublished); *Latowski* v. *Northwoods Nursing Center,* No. 12–2408, 2013 U.S. App. LEXIS 25738, at *10–*11 (6th Cir. December 23, 2013) (unpublished).[76]

The phrase ''or are required to be provided by a contractor's policy or other relevant laws'' is included to cover the situation where a contractor's policy or a relevant law (such as the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* as amended (ADA), and section 503) would require an alternative job assignment or job modification to be provided to an employee not affected by pregnancy, childbirth, or related medical condition but who is similarly restricted in his or her ability to perform the job. In such a situation, the existence of the policy or law (*e.g.,* the ADA and Section 503) requiring reasonable accommodation or job modifications for the one class of employees—employees with disabilities who are not affected by pregnancy, childbirth, or related medical conditions—requires that the contractor similarly provide such accommodations to pregnant employees who are similar in their ability or inability to work. Failure to do so is disparate treatment in violation of Executive Order 11246. The list in § 60–20.5(b) is by no means exhaustive, but rather, contains a few illustrative examples. The relevant provisions of the EEOC's 2014 enforcement guidance on pregnancy discrimination as well as its Guidelines on Discrimination Because of Sex (29 CFR 1604.10) and Questions and Answers on the Pregnancy Discrimination Act (Appendix to part 1604 of 29 CFR) provide additional instruction.

Proposed paragraph (c) addresses the provision of leave related to pregnancy, childbirth, or related medical conditions. Paragraph (c)(1) sets forth the general title VII principle that neither family nor medical leave, including family or medical leave related to pregnancy, childbirth, or related medical conditions, may be denied or provided differently on the basis of sex. Paragraph (c)(2) elaborates on this general principle. Paragraph (c)(2)(a) requires that employees affected by pregnancy, childbirth, or related medical conditions be granted medical leave, including paid sick leave, on the same basis that such leave is granted to other employees unable to work for other medical reasons. An employer may not impose requirements on pregnancy leave not imposed on other employees similar in their ability or inability to work. For example, employers may not impose a shorter maximum amount of pregnancy leave as compared to the maximum time off allowed for other types of medical or short-term disability leave. Paragraph (c)(2)(b) requires that family leave be provided to men on the same terms that it is provided to women.

Consistent with the EEOC's Guidelines on Discrimination Because of Sex, 29 CFR 1604.10(c), and Section I.B.2 of its recent enforcement guidance on pregnancy discrimination, proposed paragraph (c)(3) applies disparate impact analysis to contractor leave policies that are inadequate such that they have a disparate impact on members of one sex. Thus, a contractor that provides workers who are temporarily unable to work due to pregnancy, childbirth, or related medical conditions with no parental or medical leave at all, or with insufficient leave, may be held liable for discrimination based on sex, if such a practice is found to have an adverse impact on such workers, unless the contractor can demonstrate that the failure to provide leave or sufficient leave is job related and consistent with business necessity.

It should be noted that this provision is different from current § 60–20.3(g), which requires contractors to provide maternity leave whether or not their failure to do so has a disparate impact on women. However, OFCCP has not enforced this requirement in § 60–20.3(g) for some time. Instead, as was stated in its previous Federal Contractor Compliance Manual (FCCM), issued in 1988, OFCCP has:

[75] The EEOC further explained its position in *EEOC* v. *Horizon/CMS Healthcare Corp.,* 220 F.3d 1184 (10th Cir. 2000) (decided on other grounds). The EEOC argued in *Horizon* that ''the Charging Parties are most appropriately compared to all temporarily-disabled, non-pregnant employees *whether they sustained their injuries on or off the job.'' Id.* at 1194–1195 (emphasis added).

[76] Other Sixth Circuit opinions appear to suggest a different interpretation of the PDA. *Reeves* v. *Swift Transp. Co.,* 446 F.3d 637 (6th Cir. 2006); *Tysinger* v. *Police Dept.,* 463 F.3d 569 (2006). In addition, other circuits have held that the reason for employees' inability to work does make a difference to the determination whether employees affected by pregnancy, childbirth, or related medical conditions are similarly situated to those not so affected for purposes of receiving accommodations for their inability to work. *Young* v. *United Parcel Serv., Inc.,* 707 F.3d 437 (4th Cir. 2013), *cert. granted* (U.S. No. 12–1226, *July 1, 2014*); *Serednyj* v. *Beverly Healthcare, LLC,* 656 F.3d 540, 548–549 (7th Cir. 2011); *Spivey* v. *Beverly Enters., Inc.,* 196 F.3d 1309, 1312–1313 (11th Cir. 1999); *Urbano* v. *Continental Airlines, Inc.,* 138 F.3d 204, 207–208 (5th Cir.), cert. denied, 525 U.S. 1000 (1998); *Troupe* v. *May Dep't Stores Co.,* 20 F.3d 734, 738 (7th Cir. 1994).

consistent with the PDA, [current] 41 CFR 60–1.4(a), and the EEOC Guidelines on Discrimination Because of Sex, . . . implement[ed] the following policies:

i. . . .

ii. If the contractor's leave policy, or lack thereof, has an adverse impact on employees of one sex and is not justified by business necessity, it violates the Executive Order.[77]

Similarly, the current FCCM requires Compliance Officers to ''examine whether the contractor's leave policy, or lack thereof, has an adverse impact on employees of one sex and is not justified by business necessity.'' Section 2H01(b). Thus, proposed paragraph (c)(3) is consistent both with OFCCP's current and long-standing practice.

OFCCP welcomes comments from stakeholders about current practices and policies regarding workplace accommodations and leave for pregnancy, childbirth, or related medical conditions; for care for newborn or newly adopted or foster children; and for an employee's serious health conditions (other than those related to pregnancy and childbirth).

Section 60–20.6 Other Fringe Benefits

Current § 60–20.6 entitled ''Affirmative action'' has been removed because the requirements related to affirmative action programs are set forth in parts 60–2 and 60–4 of this title.

This proposed section is new and is divided into three paragraphs. Proposed paragraph (a) states the general principle that contractors may not discriminate on the basis of sex in the provision of fringe benefits. Proposed paragraph (b) defines ''fringe benefits'' broadly to encompass a variety of such benefits that are now provided by contractors. In proposed paragraph (c), OFCCP replaces the inaccurate statement found at current § 60–20.3(c) that a contractor will not be considered to have violated the Executive Order if its contributions for fringe benefits are the same for men and women or if the resulting benefits are equal. In 1978, the Supreme Court held that under title VII, an employer must provide equal benefits to men and women, even if doing so costs more for one sex than the other. *City of Los Angeles* v. *Manhart,* 435 U.S. 702 (1978); *see also Ariz. Governing Comm.* v. *Norris,* 463 U.S. 1073 (1983).[78]

Section 60–20.7 Employment Decisions Made on the Basis of Sex-Based Stereotypes

This proposed section is new. It states the well-recognized principle that employment decisions made on the basis of stereotypes about how males and/or females are expected to look, speak, or act are a form of sex-based employment discrimination. As the Supreme Court stated in *Price Waterhouse* v. *Hopkins,* 490 U.S. at 251, ''we are beyond the day when an employer can evaluate employees by assuming or insisting that they match the stereotype associated with their . . . [sex].'' In *Price Waterhouse,* the Court held that an employer's failure to promote a female senior manager to partner because of the sex-stereotyped perceptions that she was too aggressive and did not ''walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry'' was unlawful sex-based employment discrimination.[79] The principle that sex-based stereotyping is a form of sex discrimination has been applied consistently in Supreme Court and lower-court decisions. *See, e.g., Nevada Dep't of Human Res.* v. *Hibbs,* 538 U.S. 721 (2003) (stereotype-based beliefs about the allocation of family duties on which state employers relied in establishing discriminatory leave policies held to be sex discrimination under the Constitution); *Chadwick* v. *Wellpoint, Inc.,* 561 F.3d 38 (1st Cir. 2009) (making employment decision based on the belief that women with young children neglect their job responsibilities is unlawful sex discrimination); *Prowel* v. *Wise Bus. Forms, Inc.,* 579 F.3d 285 (3d Cir. 2009) (harassment based on a man's effeminacy); *Terveer* v. *Billington,* 2014 WL 1280301 (D. DC March 31, 2014) (hostile work environment based on stereotyped beliefs about the appropriateness of same-sex relationships).[80] *Cf. U.S.* v. *Virginia,* 518 U.S. 515, 533 (1996) (in making classifications based on sex, state governments ''must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females'').[81] Specific examples of such stereotyping follow in proposed paragraphs (a) through (c).

Proposed paragraphs 60–20.7(a), (b), and (c) address stereotyping based on an employee's nonconformity with norms about how people with the employee's assigned sex at birth should look, speak, and act. Paragraph (a) sets forth three examples of such stereotyping: in proposed paragraph 60–20.7(a)(1), failure to promote female employee because she did not wear jewelry, make-up, or high heels (*see* Price Waterhouse, supra); in proposed paragraph 60–20.7(a)(2), harassment of a man because he is too effeminate, (*see Prowel* v. *Wise Bus. Forms, Inc., supra*); and in proposed paragraph 60–20.7(a)(3), adverse treatment of an employee because he or she does not conform to sex-role expectations by being in a

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[77] U.S. Department of Labor, Office of Federal Contract Compliance Programs Federal Contract Compliance Manual (1988), ch. 3, § 3G01(h)(2) (on file with OFCCP) (hereinafter Previous FCCM). A version of this Manual (dated 1993, but containing the same language) is available at *http://www.docstoc.com/docs/8387063/Federal-Contract (last accessed Oct. 7, 2014).*

[78] Indeed, the FCCM follows current law, providing that ''if the contractor is not providing equal fringe benefits and/or not making equal contributions to insurance plans or pensions for men and women, this may constitute discrimination.'' FCCM, ch. 2, § 2L03. The Previous FCCM also noted the discrepancy between OFCCP's regulations and title VII law, providing (in chapter 3, § 3G01(h)(3)) that because—

OFCCP's policy is to interpret the nondiscrimination provisions of the Executive Order consistent with Title VII principles. . . , if [an OFCCP compliance officer] becomes aware of a situation where a contractor is either not paying equal fringe benefits and/or not making equal contributions to fringe benefits for men and women, the matter should be brought to the attention of RSOL [the Regional Solicitor of Labor].

[79] *Price Waterhouse,* 490 U.S. at 235.

[80] *See also Centola* v. *Potter,* 183 F. Supp. 2d 403 (D. Mass. 2002) (''Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women.''); *Heller* v. *Columbia Edgewater Country Club,* 195 F. Supp. 2d 1212 (D. Or. 2002) (''[A] jury could find that Cagle repeatedly harassed (and ultimately discharged) Heller because Heller did not conform to Cagle's stereotype of how a woman ought to behave. Heller is attracted to and dates other women, whereas Cagle believes that a woman should be attracted to and date only men.''). The EEOC has recognized in a long line of federal sector decisions that adverse actions taken on the basis of sex stereotypes related to sexual orientation violate Title VII. *Castello* v. *U.S. Postal Service,* EEOC Request No. 0520110649, 2011 WL 6960810 (Dec. 20, 2011) (sex-stereotyping evidence entailed offensive comment by manager about female subordinate's relationships with women); *Veretto* v. *U.S. Postal Service,* EEOC Appeal No. 0120110873, 2011 WL 2663401 (July 1, 2011) (complainant stated plausible sex-stereotyping claim alleging harassment because he married a man); *Culp* v. *Dep't of Homeland Security,* EEOC Appeal 0720130012, 2013 WL 2146756 (May 7, 2013) (Title VII covers discrimination based on associating with lesbian colleague); *Couch* v. *Dep't of Energy,* EEOC Appeal No. 0120131136, 2013 WL 4499198, at *8 (Aug. 13, 2013) (complainant's claim of harassment based on his ''perceived sexual orientation''); *Complainant* v. *Department of Homeland Security,* EEOC Appeal No. 0120110576, 2014 WL 4407422 (Aug. 20, 2014) (''While Title VII's prohibition of discrimination does not explicitly include sexual orientation as a basis, Title VII prohibits sex discrimination, including sex-stereotyping discrimination and gender discrimination'' and ''sex discrimination claims may intersect with claims of sexual orientation discrimination.'').

[81] The U.S. Court of Appeals for the Seventh Circuit articulated this principle as early as 1971. *Sprogis* v. *United Air Lines, Inc.,* 444 F.2d 1194, 1198 (7th Cir. 1971) (''In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women *resulting from sex stereotypes.*'') (emphasis added).

relationship with a person of the same sex (*see Veretto* v. *U.S. Postal Service* and *Castello* v. *U.S. Postal Service, supra* note 80).

Paragraph (b) addresses disparate treatment based on gender identity. As noted above, disparate treatment of a transgender employee may constitute discrimination because of the individual's non-conformity to sex-based stereotypes. *Barnes* v. *City of Cincinnati,* 401 F.3d 729 (6th Cir. 2005) (holding that transgender woman was a member of a protected class based on her failure to conform to sex-based stereotypes and thus her title VII claim was actionable); *Smith* v. *City of Salem,* 378 F.3d 566, 574 (6th Cir. 2004) (''discrimination against a plaintiff who is a transsexual [*sic*]—and therefore fails to act and/or identify with his or her gender—is no different from the discrimination directed against [the plaintiff] in *Price Waterhouse* who, in sex-stereotypical terms, did not act like a woman''); *Schroer* v. *Billington, supra,* at 305–06 (D.D.C. 2008) (withdrawal of a job offer from a transgender applicant constituted sex-stereotyping discrimination in violation of title VII). In addition to these appellate cases, ''[t]here has likewise been a steady stream of district court decisions recognizing that discrimination against transsexuals [*sic*] on the basis of sex-based stereotyping constitutes discrimination because of sex.'' *Macy* v. *Holder, supra.* See also *Glenn* v. *Brumby,* 663 F.3d 1312 (11th Cir. 2011) (termination of a transgender employee constituted discrimination on the basis of gender non-conformity and sex-stereotyping discrimination under Equal Protection Clause). *Cf. Oncale* v. *Sundowner Offshore Servs.,* 523 U.S. 75, 78 (1998) (same-sex harassment may be sex discrimination); *Prowel* v. *Wise Bus. Forms,* 579 F.3d 285 (3d Cir. 2009) (harassment of an ''effeminate'' man may be sex discrimination).[82] This principle—that discrimination against a transgender individual is discrimination based on non-conformity to sex-based stereotypes, and thus sex discrimination—has also been adopted under the Gender-Motivated Violence Act,[83] *Schwenk* v. *Hartford,* 204 F.3d 1187, 1201–02 (9th Cir. 2000), and the Equal Credit Opportunity Act,[84] *Rosa* v. *Park W. Bank & Trust Co.,* 214 F.3d 213, 215–16 (1st Cir. 2000).

Paragraph 60–20.7(c) addresses stereotyping based on specific expectations about the proper roles of women and men regarding caregiving. As noted above, the EEOC recognizes that adverse treatment of women stemming from sex-based assumptions about ''childcare responsibilities that will make female employees less dependable than male employees'' violates title VII.[85] Even an employer's perceptions of a caregiver's work performance can, consciously or unconsciously, be affected by sex-based stereotypes that female caregivers are ''less capable and skilled than their childless female counterparts or their male counterparts'' (Caregiving Guidance, II.A.4). Moreover—

> Gender-based stereotypes may also influence how male workers are perceived: ''Stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men. These mutually reinforcing stereotypes created a self-fulfilling cycle of discrimination.'' Stereotypes of men as ''bread winners'' can further lead to the perception that a man who works part time is not a good father, even if he does so to care for his children. Thus, while working women have generally borne the brunt of gender-based stereotyping, unlawful assumptions about working fathers and other male caregivers have sometimes led employers to deny male employees opportunities that have been provided to working women or to subject men who are primary caregivers to harassment or other disparate treatment. For example, some employers have denied male employees' requests for leave for childcare purposes even while granting female employees' requests.
>
> Caregiving Guidance II.C [footnotes omitted].

In its introduction, the Caregiving Guidance also notes that discrimination against caregivers may also fall under the ADA, which prohibits discrimination based on an employee's association with an individual with a disability. The same is true of section 503.

Section 60–20.8 Harassment and Hostile Work Environments

This proposed section is new. It has been well-recognized for many years that harassment on the basis of sex, including the existence of a work environment that is hostile to members of one sex, may give rise to a violation of title VII.[86] Moreover, sexual harassment continues to be a serious problem for women in the workplace[87] and a significant barrier to women's entry into and advancement in many nontraditional occupations, including the construction trades and the computer and information technology industries. Yet, current part 60–20 does not include any references to sexual harassment or hostile work environments. Proposed § 20.8 remedies this omission.[88]

Proposed paragraph 60–20.8(a) incorporates the provision of EEOC's Guidelines relating to sexual harassment virtually verbatim. *See* 29 CFR 1604.11(a). Inclusion of the EEOC language is intended to align the prohibitions of sexually harassing conduct under the Executive Order with the prohibitions under title VII.

Proposed paragraph 60–20.8(b) defines harassment because of sex under the Executive Order broadly to include sexual harassment (including sexual

[82] See also *Statement of Interest of the United States* at 4, Apr. 4, 2014, in *Burnett* v. *City of Philadelphia,* No. 09–4348 (E.D. Pa.) (''Since *Price Waterhouse,* in cases where the defendant's action had been motivated by the plaintiff's failure to conform with sex-based stereotypes, every Federal circuit court of appeals that has addressed the question has recognized that disparate treatment against a transgender plaintiff can be discrimination 'because . . . of sex.' '').

[83] 42 U.S.C. 13981.

[84] 15 U.S.C. 1691.

[85] EEOC, *Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities* II.A.3 (last modified Feb. 8, 2011), *http://www.eeoc.gov/policy/docs/caregiving.html* (last accessed Oct. 2, 2014).

[86] U.S. Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, 41 CFR 1604.11 (1980) (provision on harassment); *Harris* v. *Forklift Sys.,* 510 U.S. 17 (1993); *Meritor Savings Bank* v. *Vinson,* 477 U.S. 57 (1986); *Barnes* v. *Costle,* 561 F.2d 983 (D.C. Cir. 1977).

[87] In FY 2013, the EEOC received 7,256 sexual harassment charges (out of 93,727). U.S. Equal Employment Opportunity Commission, *Enforcement & Litigation Statistics, Sexual Harassment Charges FY 2010—2013, available at http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm* (last accessed Nov. 2, 2014); U.S. Equal Employment Opportunity Commission, *Enforcement and Litigation Statistics, Charge Statistics: FY 1997 Through FY 2013, available at http://eeoc.gov/eeoc/statistics/enforcement/charges.cfm* (last accessed Nov. 2, 2014). In FY 2011 (the last year for which combined data is available), the EEOC and state and local fair employment practices agencies together received just over 11,300 charges of sexual harassment. The average number of such claims filed per year from FY 2000 through FY 2011 was 13,446. OFCCP calculations from data in U.S. Equal Employment Opportunity Commission, *Enforcement & Litigation Statistics, Sexual Harassment Charges: EEOC & FEPAs Combined: FY 1997—FY 2011, available at http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm* (last accessed Nov. 2, 2014).

[88] The one reference to harassment in OFCCP's current body of regulations implementing Executive Order 11246 is that construction contractors are required to ''[e]nsure and maintain a working environment free of harassment, intimidation, and coercion at all sites.'' 41 CFR 60–4.3(a) (subsections 7(a) and (n) of the required Equal Opportunity Clause for construction contracts).

In addition, in chapter 3, § 2H01(d), the FCCM recognizes that ''[a]lthough not specifically mentioned in the Guidelines, sexual harassment (as well as harassment on the basis of race, national origin or religion) is a violation of the nondiscrimination provisions of the Executive Order'' and directs OFCCP compliance officers to ''be alert for any indications of such harassment.'' It goes on to state that ''OFCCP follows Title VII principles when determining whether sexual harassment has occurred.''

harassment based on gender identity), harassment based on pregnancy, childbirth, or related medical conditions, and harassment that is not sexual in nature but is because of sex (including harassment based on gender identity). This aligns the meaning of ''because of sex'' for purposes of sexual harassment with its meaning under current title VII and Executive Order law. *See* proposed § 60–20.2, which includes discrimination on the bases of pregnancy, childbirth, or related medical conditions and gender identity discrimination as types of sex discrimination.

Proposed paragraph 60–20.8(c) suggests as best practices procedures that contractors may develop and implement ''to ensure an environment in which all employees feel safe, welcomed, and treated fairly . . . [and] are not harassed because of sex.'' The suggested procedures are: Broad dissemination of the message ''that harassing conduct will not be tolerated'' (paragraph 60–20.8(c)(1)); anti-harassment training (paragraph 60–20.8(c)(2)); and procedures for handling and resolving complaints ''about harassment and intimidation based on sex'' (paragraph 60–20.8(c)(3)). Contractors are not required to use such procedures and will not be found in violation of this part for not using such procedures. We note, however, that using such procedures may assist contractors in meeting their obligations with respect to harassment and hostile work environments. Procedures such as these are key to preventing harassment before it occurs.

In addition, a contractor can avoid or reduce liability for certain sexually harassing acts committed by its supervisors if it can show that it has taken reasonable care to prevent and correct harassment.[89] The activities listed in paragraph 60–20.8(c) are the kinds of activities that would help a contractor in making that showing. For example, taking reasonable care ''generally requires establish[ing], disseminat[ing], and enforcing an anti-harassment policy and complaint procedure.'' [90] The law does not require such activities, but it does encourage employers to engage in them.

Regulatory Procedures

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity).

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

This proposed rule has been designated a ''significant regulatory action'' although not economically significant, under § 3(f) of Executive Order 12866. The NPRM is not economically significant, as it will not have an annual effect on the economy of $100 million or more. The Office of Management and Budget has reviewed the NPRM.

The Need for the Regulation

OFCCP's longstanding policy is to follow title VII principles when conducting analyses of potential sex discrimination under Executive Order 11246. *See* Notice of Final Rescission, 78 FR 13508, February 28, 2013. However, the existing Sex Discrimination Guidelines, unchanged since their initial promulgation in 1970 and re-issuance in 1978, are no longer an accurate depiction of current title VII principles. Title VII has been significantly amended four times since that time, and the Supreme Court has issued several decisions clarifying that practices such as sexual harassment can be unlawful discrimination. In light of these changes, this proposed rule revises the current Guidelines, and replaces them with new sex discrimination regulations that accurately set forth a contractor's obligation not to discriminate on the basis of sex in accordance with current title VII principles. (A more detailed discussion of the need for the regulation is contained in Reasons for Amending the Current Sex Discrimination Guidelines, *supra*.)

Discussion of Impacts

In this section, OFCCP presents a summary of the costs associated with the new requirements in part 60–20. Comments are welcome on every aspect of the cost and burden calculations including but not limited to the amount of time contractors would spend on complying with the proposals in this NPRM, including those related to accommodations for light duty. The estimated labor cost to contractors and subcontractors is based on U.S. Department of Labor, Bureau of Labor Statistics (BLS) data in the publication ''Employer Costs for Employee Compensation'' issued in December 2013, which lists total compensation for Management, Professionals, and Related Occupations as $51.58 per hour.[91]

There are approximately 500,000 contractor firms, employing approximately 65 million employees, registered in the SAM. Therefore, OFCCP estimates that 500,000 contractor companies or firms may be affected by the proposed new provisions.[92] The SAM number results in an overestimation for several reasons: the system captures firms that do not meet the $10,000 jurisdictional dollar threshold for this proposed rule; it captures inactive contracts, although OFCCP's jurisdiction covers only active contracts; and it captures thousands of recipients of Federal grants and Federal financial assistance, which are not contractors.[93]

[89] The Supreme Court established this affirmative defense in *Burlington Industries, Inc.* v. *Ellerth,* 524 U.S. 742 (1998), and *Faragher* v. *City of Boca Raton,* 524 U.S. 775 (1998). See also U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors* (July 18, 1999), *available at http://www.eeoc.gov/policy/docs/harassment.html* (last accessed Oct. 7, 2014) [hereinafter EEOC Guidance on Vicarious Liability for Unlawful Harassment].

[90] EEOC Guidance on Vicarious Liability for Unlawful Harassment, *supra* note 89, § V(C).

[91] Press Release, Bureau of Labor Statistics, U.S. Department of Labor, Employer Costs for Employee Compensation—December 2013, at 4, *available at http://www.bls.gov/news.release/pdf/ecec.pdf* (last accessed Oct. 6, 2014).

[92] U.S. General Services Administration, System for Award Management, *Legacy CCR Extracts Public (''FOIA'') Data Package,* May 2014, *available at https://www.sam.gov/portal/public/SAM/*(last accessed June 14, 2014).

[93] In addition to these reasons to believe that the SAM data yield an overestimate of the number of entities affected by this rule, there is at least one reason to believe the data yield an underestimate: SAM does not necessarily include all subcontractors. But this data limitation is offset somewhat because of the overlap among contractors and subcontractors; a firm may be a subcontractor on some activities but have a contract on others and thus in fact be included in the SAM data.

Cost of Regulatory Familiarization

Agencies are required to include in the burden analysis the estimated time it takes for contractors to review and understand the instructions for compliance. *See* 5 CFR 1320.3(b)(1)(i). In order to minimize this burden, OFCCP will publish compliance assistance materials including, but not limited to, fact sheets and ''Frequently Asked Questions.'' OFCCP will also host webinars for the contractor community that will describe the new requirements and conduct listening sessions to identify any specific challenges contractors believe they face, or may face, when complying with the requirements.

Based on its experience with Federal contractors' compliance with the laws OFCCP enforces, OFCCP believes that human resources or personnel managers at each contractor establishment or firm will become responsible for understanding or becoming familiar with the new requirements. Therefore, OFCCP estimates that it will take 60 minutes or 1 hour for a management professional at each contractor establishment to either read the compliance assistance materials provided by OFCCP or participate in an OFCCP webinar to learn more about the new requirements. Consequently, the estimated burden for rule familiarization is 500,000 hours (500,000 contractor companies × 1 hour = 500,000 hours). Based on data from the Bureau of Labor Statistics, which lists total compensation for the Management, Professional, and Related Occupations group at $51.58,[94] we calculate the total estimated cost as $25,790,000 (500,000 hours × $51.58/hour = $25,790,000) or $52 per contractor company.

Cost of Proposed Provisions

The NPRM proposes revising the current Sex Discrimination Guidelines to replace them with regulations that set forth requirements that Federal contractors and subcontractors and federally assisted construction contractors and subcontractors must meet in fulfilling their obligations under Executive Order 11246, as amended, to ensure nondiscrimination in employment on the basis of sex. In order to reduce the burden and increase understanding, the NPRM includes examples of prohibited employment practices with each of the provisions.

The NPRM proposes changing the title of the regulation to provide clarity that the provisions in part 60–20 are regulations implementing Executive Order 11246. The title change does not incur burden.

The NPRM proposes minor edits to § 60–20.1, including deleting a sentence explaining the reason for promulgating this part of the regulation, and modifying the sentence notifying the public that part 60–20 is to be read in connection with existing regulations. These minor edits update the regulations and provide clarity. Because the edits do not cause additional action on the part of contractors, no additional burden is associated with this section.

Section 60–20.2, General Prohibitions, of the NPRM proposes removing the current section ''Recruitment and advertisement'' section and replacing it with a section that articulates the general prohibition against sex discrimination in employment. The general prohibition against sex discrimination in employment is not a new provision and as such does not require any additional action on the part of Federal contractors, subcontractors, or federally assisted construction contractors or subcontractors. Thus no burden is assessed for this provision.

The NPRM proposes replacing the current § 60–20.3 (Job policies and practices) with ''Sex as a *bona fide* occupational qualification.'' In this section, the NPRM proposes to consolidate in one provision the current references to the BFOQ defense available to employers and update the language set forth in title VII. This reorganization is intended to make it easier for Federal contractors, subcontractors, and federally assisted construction contractors and subcontractors to locate and understand the BFOQ defense. This section reorganizes existing information and does not incur additional burden. Thus no burden is assessed for this provision.

Section 60–20.4 proposes to replace the current provision addressing seniority systems with a section addressing discrimination in compensation practices. The proposed section provides clear guidance to covered contractors on their obligation to provide equal opportunity with respect to compensation. It provides guidance on determining similarly situated employees and confirms that OFCCP follows title VII principles in investigating compensation discrimination. The provisions do not create new requirements; rather, they clarify existing provisions regarding compensation discrimination, thus reducing confusion that may have resulted in the analysis of compensation discrimination.[95] Therefore no new burden or new benefit (beyond confusion reduction) is created by this provision.

The NPRM proposes to address discrimination on the basis of pregnancy, childbirth, or related medical conditions in Section 60–20.5.

Subsection 60–20.5(a) prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions, including childbearing capacity. This clarifies current law that discrimination based on any of these factors is prohibited under Executive Order 11246 and as such does not generate new burden or new benefits (with the exception of reduced confusion).

Subsection 60–20.5(b) provides a non-exhaustive list of examples of unlawful pregnancy discrimination, including refusing to hire pregnant applicants; firing an employee or requiring an employee to go on leave because the employee becomes pregnant; limiting a pregnant employee's job duties based on pregnancy or requiring a doctor's note in order for a pregnant employee to continue employment; providing employees with health insurance that does not cover hospitalization and other medical costs related to pregnancy, childbirth, or related medical conditions when hospitalization is provided for other medical conditions; and denying an alternative job assignment, modified duties or other accommodations to a pregnant employee when such accommodations are provided or are required to be provided by a contractor's policy or by other relevant laws to other employees whose abilities or inabilities to work are similar. The clarification, including the examples provided in subsection 60–20.5(b), reduces contractors' confusion by harmonizing OFCCP's outdated regulations with current title VII jurisprudence. Although OFCCP believes that Federal contractors are already required to provide accommodations and light duty under title VII, because some courts disagree with this interpretation, *see supra* note 76 and accompanying text, it estimates that there will be some burden associated with this provision for contractors that did not provide accommodations or light duty in the past.

To determine the burden of this accommodations provision, OFCCP first estimated the number of workers who may need an accommodation or light

[94] See *supra* note 91 and accompanying text.

[95] The existing § 60–20.5 addressed discriminatory wages. The proposed § 60–20.4 incorporates that existing requirement and updates it to be consistent with current title VII law.

duty during pregnancy. No specific data sets detail the characteristics of Federal contractor and subcontractor workers relating to pregnancy. Thus OFCCP relied on the data sets available for the general population and general labor force. OFCCP believes that the characteristics of the general labor force are similar to the Federal contractor workforce.

In estimating the burden associated with the accommodations provision, OFCCP determined that there are approximately 65 million employees who work for the Federal contractors and other recipients of Federal monies that are included in the SAM database. Because the data does not indicate gender demographics, OFCCP used data from the Bureau of Labor Statistics that indicates that 47 percent of the workforce is female.[96] According to National Center for Health Statistics (NCHS) data, there were 6,127,000 pregnancies among women ages 18 to 44 in the United States in 2009 among the general population.[97] When compared to data from the U.S. Census for the same time period, that number of pregnancies reflects a pregnancy rate of approximately 10.9 percent.[98]

OFCCP further refined this rate to reflect pregnancies of working women. NCHS's pregnancy rate did not distinguish between working and non-working women. Thus OFCCP turned to data from the U.S. Census. U.S. Census American Fact Finder does not report on pregnancy, but does report on births. Census data also shows whether the mother was in the labor force. As this is the best data available, OFCCP used the ratio of births among working and non-working mothers to determine the pregnancy rate of women in the workforce. Thus, OFCCP determined that the pregnancy rate for women in the workforce is approximately 61 percent of the rate for women in the general population, translating to a pregnancy rate of 6.7 percent of women in the Federal contractor workforce.[99] Based on the above, OFCCP estimates approximately 2,046,850 women (four women per SAM contractor firm) in the Federal contractor workforce would be pregnant in a year.[100]

Not every pregnant employee in the Federal contractor workforce will require an accommodation that might involve more than a *de minimis* cost. Many will have no medical condition associated with their pregnancies that require such accommodation. Even for those who do have such conditions, the positions that require such accommodation generally involve physical exertion or standing; such positions are likely to be found in the job categories of craft workers, operatives, laborers, and service workers. Based on data from the Employer Information Report EEO–1, OFCCP estimates that 21 percent of women in the Federal contractor workforce are in such job categories. Thus, of the 2,046,850 women who may be pregnant, 429,839 are in positions in the job categories likely to require accommodations that might involve more than a *de minimis* cost.

Reports from NIH show that the incidence of medical conditions during pregnancy that require accommodations ranges from 0.5 percent (placenta previa) to 50 percent (back issues).[101] Thus, OFCCP estimates that of the approximately 429,839 women in positions that require physical exertion or standing, half or 214,920 may require some type of an accommodation or light duty.

The types of accommodations needed during pregnancy also vary. They range from time off for medical appointments and more frequent breaks to stools for sitting and assistance with heavy lifting.[102] Reports from the W.K. Kellogg Foundation on women's child bearing experiences and the National Women's Law Center on accommodating pregnant workers show that the costs associated with accommodating pregnant workers are minimal and generally involve schedule adjustments or modified work duties.[103] One study found that when faced with a pregnancy-related need for accommodation, between 62 percent and 74 percent of pregnant women asked their employer to address their needs. The study further found that between 87 percent and 95 percent of the pregnant women who requested an adjustment to their work schedule or job duties worked for employers that attempted to address those requests. The study specifically found that 63 percent of pregnant women who needed a change in duties such as less lifting or more sitting asked their employers to address that need, and 91 percent of those women worked for employers that attempted to address their needs.[104] Based on this study, OFCCP believes that most employers do provide some form of accommodation when requested.

To determine the cost of accommodation or light duty imposed by the proposed rule, OFCCP considered the types of light duty or accommodations needed. Generally, providing light duty or accommodation for pregnancy involves adjusting work schedules or allowing more frequent breaks. OFCCP believes that these accommodations would incur little to no additional cost.

Additional accommodations may involve either modifications to work environments (providing a stool for sitting rather than standing) or to job duties—for example, lifting restrictions. In making such an accommodation, Federal contractors have discretion regarding how they would make such modifications. For example, a contractor may provide an employee with an existing stool, or a contractor may have other employees assist when heavy lifting is required. To determine the cost of such accommodations, OFCCP referred to the Job Accommodation Network (JAN). JAN reports that the average cost of accommodation is $500.[105]

As stated above, 63 percent of pregnant women who needed a change in duties related to less lifting or more

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[96] Women in the Labor Force, *supra* note 12, at 2.

[97] Centers for Disease Control and Prevention, National Center for Health Statistics, NCHS Data Brief No. 136: *Pregnancy Rates for U.S. Women Continue to* Drop 2 (2013) *available at http://www.cdc.gov/nchs/data/databriefs/db136.pdf* (last accessed Oct. 6, 2014).

[98] This may be an overestimation of the number of pregnant workers because there is limited data available regarding the age of employees of federal contractors.

[99] U.S. Census Bureau, *American Fact Finder,* Women 16 to 50 Years Who Had a Birth in the Past 12 Months by Marital Status and Labor Force Status, 2009 to 2011 American Community Survey 3-Year Estimates, *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_3YR_B13012&prodType=table* (last accessed Aug. 1, 2014). The data table reports birth rates for women in labor force at 5.1 percent, compared to women not in the labor force at 8.4 percent. Comparing the two rates (5.1 percent to 8.1 percent), the birth rate of women in the labor force was 61 percent that of women not in the labor force. Therefore, multiplying the pregnancy rate among women of working age, 10.9 percent, by 61 percent results in a 6.7 percent pregnancy rate.

[100] *Id.*

[101] S. Malmqvist et.al., *Prevalence of low back and pelvic pain during pregnancy* (Abstract), J. Manipulative Physiological Therapy, National Center for Biotechnology Information (2012), *available at http://www.ncbi.nlm.nih.gov/pubmed/22632586,* (last accessed Oct. 6, 2014).

[102] *Unlawful Discrimination Against Pregnant Workers and Workers with Caregiving Responsibilities: Meeting of the U.S. Equal Emp. Opportunity Comm'n* 8 (Feb. 15, 2012) (statement of Dr. Stephen Benard, Professor of Sociology, Indiana University), *available at http://www.eeoc.gov/eeoc/meetings/2-15-12/transcript.cfm (last accessed Oct. 6, 2014).*

[103] Heavy Lift, supra note 51, at 12.

[104] Eugene Declerq et al., W.K. Kellogg Foundation, Listening to Mothers III: New Mothers Speak Out, 36, (2013).

[105] Beth Loy, Job Accommodation Network, *Workplace Accommodations: Low Cost, High Impact, available at http://askjan.org/media/lowcosthighimpact.html* (last updated Sept. 1, 2014) (last accessed Oct. 6, 2014).

sitting requested such an accommodation from their employers. Thus, OFCCP estimates that 135,400 women (214,920 × 0.63) would have made such a request, and 91 percent, or 123,214 of those requests (135,400 × 0.91) would have been addressed. In addition, OFCCP assumes that of the 37 percent (79,520 women) who did not make such a request, had they made the request, the needs of 91 percent of them (72,364 women) would also have been addressed.[106] Thus, this proposed rule would require covered contractors to accommodate the nine percent of women whose needs were not addressed. Therefore, OFCCP estimates that the cost, accounting for those pregnant women who made requests and those additional women who could make requests, would be $9,671,000 ((135,400 − 123,214) + (79,520 − 72,364) × $500). Accounting for women's requests that could be made but may not be made is likely an overestimation of the cost of this accommodation. In addition, OFCCP believes that this cost estimate may also be an overestimate because contractors with 15 or more employees are covered by a similar requirement found in title VII and 36 states have requirements that apply to employers with fewer than 15 employees.[107] Although OFCCP seeks comments on all aspects of its calculation of burden and costs, the agency specifically seeks comments on the burden associated with providing accommodations to pregnant workers.

The NPRM proposes replacing the current § 60–20.6 (Affirmative action) with a new section titled ''Other fringe benefits.'' The current section on affirmative action is unnecessary because the requirements related to affirmative action programs are set forth in parts 60–2 and 60–4. In the new § 60–20.6, the NPRM proposes to clarify the existing requirement of nondiscrimination in fringe benefits, specifically with regard to application of that principle to contributions to and distributions from pension and retirement funds. The proposed section reflects the current state of title VII law with regard to pension funds, imposing no additional burden on contractors covered both by Executive Order 11246, as amended, and by title VII (which, generally, covers employers of 15 or more employees) or by state or local laws that similarly prohibit sex discrimination (many of which have lower coverage thresholds [108]). As to the remaining contractors—those that have fewer than 15 employees as defined by title VII, are not covered by state or local laws, and have at least $10,000 in Federal contracts or subcontracts—as noted in the discussion of this requirement elsewhere in the preamble, OFCCP's publicly available FCCM has put them on notice that OFCCP follows current law with regard to providing equal benefits and making equal contributions to pensions funds for men and women. Thus, as an existing requirement, this does not generate any new benefits (beyond reduced confusion) or additional burden.

The NPRM proposes a new section, § 60–20.7, titled ''Employment decisions made on the basis of sex-based stereotypes.'' This section explains the prohibition against making employment decisions on the basis of sex-based stereotypes, which the Supreme Court recognized in 1989 as a form of sex discrimination under title VII. This section clarifies that such discrimination includes disparate treatment based on nonconformity to stereotypical expectations about gender identity, gender expression, and sexual orientation and stereotyping based on specific expectations about the proper roles of women and men regarding caregiving. The proposed section reflects the current state of title VII law with regard to sex-based stereotyping, imposing no additional burden on contractors covered both by Executive Order 11246, as amended, and by title VII or by state or local laws that similarly prohibit sex discrimination, many of which have lower coverage thresholds.[109] As to the remaining contractors—those that have fewer than 15 employees as defined by title VII, are not covered by state or local laws, and have at least $10,000 in Federal contracts or subcontracts—as noted in the discussion of this requirement elsewhere in the preamble, OFCCP's publicly available FCCM has put them on notice that OFCCP follows current law with regard to sex-based stereotyping. The FCCM provides that:

> COs must examine whether contractor policies make prohibited distinctions in conditions of employment based on sex, including the basis of pregnancy, childbirth or related medical conditions, or on the basis of sex-based stereotypes, including those related to actual or perceived caregiver responsibilities. Contractors must not make employment decisions based on stereotypes about how males and females are ''supposed'' to look or act. Such employment decisions are a form of sex discrimination prohibited by Executive Order 11246, as amended.

FCCM, ch. 2, section 2H00(a).[110] Thus, for these contractors as well, the proposed section imposes no additional burden and generates no new benefits for their employees.

The NPRM proposes a new section, § 60–20.8, titled ''Harassment and hostile work environments.'' This section explains the circumstances under which sex-based harassment and hostile work environments violate the Executive Order, reflecting principles established in Supreme Court title VII decisions beginning in 1986. This section clarifies that such discrimination includes ''sexual harassment (including harassment based on gender identity or expression), harassment based on pregnancy, childbirth, or related medical conditions,'' and sex-based harassment that is not sexual in nature but that is because of sex or where one sex is targeted for the harassment. The proposed section describes best practices that contractors may follow to reduce and eliminate harassment and hostile work environments but explicitly states that such practices are ''not required by this part.''

The proposed section reflects the current state of title VII law with regard to sex-based harassment and hostile work environments, imposing no additional burden on contractors covered both by Executive Order 11246, as amended, and by title VII or by state or local laws that similarly prohibit sex

[106] OFCCP arrived at 79,250 by multiplying the 214,920 women by 37 percent.

[107] State laws covering employers with one employee: Alaska, Colorado, Hawaii, Maine, Michigan, Minnesota, Montana, New Jersey, North Dakota, Oklahoma, Oregon, South Dakota, Vermont, and Wisconsin; state laws covering employers with two employees: Wyoming; state laws covering employers with three employees: Connecticut; state laws covering employers with four employees: Delaware, Iowa, Kansas, New Mexico, New York, Ohio, Pennsylvania, and Rhode Island; state laws covering employers with five employees: California and Idaho; state laws covering employers with six employees: Indiana, Massachusetts, Missouri, New Hampshire, and Virginia; state laws covering employers with eight or more employees: Kentucky, Tennessee, and Washington; state laws covering employers with nine or more employees: Arkansas; state laws covering employers with 12 or more employees: West Virginia. In addition, the District of Columbia and Puerto Rico's laws cover employers with one employee.

[108] See note 99, *supra.*

[109] See note 99, *supra.*

[110] Another section of the FCCM also covers sex-based stereotyping:

> *Sex-Based Stereotyping and Caregiver Discrimination.* Differential treatment for an employment-related purpose based on sex-based stereotypes, including those related to actual or perceived caregiving responsibilities, is a violation of Title VII of the Civil Rights Act of 1964. For example, it is prohibited to deny advancement opportunities to similarly situated mothers that are provided to fathers or women without children, based on stereotypes about mothers in the workplace; it is also prohibited to deny to fathers access to family-friendly policies like workplace flexibility that employers provide to mothers, based on stereotypes about fathers' roles in care giving.
>
> FCCM, ch. 2, section 2H01(e).

discrimination (many of which have lower coverage thresholds [111]). As to the remaining contractors—those that have fewer than 15 employees as defined by title VII, are not covered by state or local laws, and have at least $10,000 in Federal contracts or subcontracts—as noted in the discussion of this requirement elsewhere in the preamble, OFCCP's publicly available FCCM has put them on notice that OFCCP follows current law with regard to sex-based harassment and hostile work environments. The FCCM provides that:

> Although not specifically mentioned in the *Guidelines,* sexual harassment, as well as harassment based on race, color, national origin or religion is a violation of the nondiscrimination provisions of EO 11246. During the onsite review, COs must be alert for any indications of such harassment. OFCCP follows Title VII principles when determining whether sexual harassment has occurred.

FCCM, Chapter 2, Section 2H01(d). Thus, for these contractors as well, the proposed section imposes no additional burden and generates no new benefits for their employees.

The total first year cost of the regulation is estimated at $35,461,000 or $71 per contractor company. Below, in Table 1, is a summary of the hours and costs:

TABLE 1—CONTRACTOR PROPOSED NEW REQUIREMENTS

Section	Burden hours	Costs
Estimated One-Time Burden:		
Regulatory Familiarization	500,000	$25,790,000
Total One-Time Burden	500,000	25,790,000
Estimated Recurring Burden:		
41 CFR 60–20.5: Light duty or accommodation	0	9,671,000
Total Annual Recurring Burden	0	9,671,000
Total Burden	500,000	35,461,000

Summary of Transfer and Benefits

If the proposed rule decreases sex-based compensation discrimination, that effect may generate a transfer of value to employees from employers (if additional wages are paid out of profits) or taxpayers (if contractor fees increase to pay higher wages to employees). Contractors may also transfer any costs of providing pregnancy accommodations to employees, by not increasing wages or reducing other benefits (to the extent not prohibited by the Davis-Bacon and Service Contract Acts). However, OFCCP does not currently have sufficient information to reliably estimate the potential transfer payments resulting from this proposed rule, and it requests public comment on data and methods to do so.

Analysis of Rulemaking Alternatives

OFCCP considered a range of regulatory alternatives that would enable the agency to encourage voluntary compliance and effectively enforce the prohibition against sex discrimination. In addition to the approach proposed in the NPRM, OFCCP considered two alternative approaches. First, OFCCP considered maintaining the current guidelines with no changes. Second, OFCCP considered rescinding the existing guidelines without proposing new regulations. Each of these alternatives is discussed in further detail below. OFCCP seeks comments from stakeholders on the proposal in the NPRM, as well as each alternative, including OFCCP's assessment of the costs and benefits.

Alternative 1: Maintaining the Current Guidelines

OFCCP considered maintaining the Sex Discrimination Guidelines with no changes. This alternative would impose no new costs and achieve no new benefits. However, as discussed above, the existing guidelines are extremely outdated and therefore do not provide sufficient or even accurate guidance to contractors regarding their nondiscrimination obligations. Thus, retaining the existing guidelines would have the negative effect of continuing to impose compliance costs on compliant contractors. It is true that, as discussed elsewhere in this preamble, the FCCM provides updated guidance in the areas of maternity leave, sex-based stereotyping, sexual harassment, and pensions. But even in these areas, the provisions of the Guidelines conflict with the FCCM and thus potentially sow confusion among the contractor community.

As mentioned above, current § 60–20.3(c) provides that a contractor will not be considered to have violated the Executive Order if its contributions for fringe benefits are the same for men and women or if the resulting benefits are equal. But in 1978, the Supreme Court held that under title VII, an employer must provide equal retirement benefits to men and women even if the contributions necessary to do so cost more for one sex than the other. While the FCCM recognizes this Supreme Court development, it is possible that contractors, especially new contractors confronted for the first time with the conflict between the outdated provisions in the Guidelines, on the one hand, and current title VII principles and the FCCM, on the other, may still be incurring legal fees or the cost of human resource professionals' time to reconcile this conflict. Moreover, maintaining the Sex Discrimination Guidelines with no changes would be inconsistent with Section 6 of Executive Order 13563, which requires agencies to engage in retrospective analyses of ''rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.''

Alternative 2: Rescinding but Not Replacing the Current Guidelines

OFCCP considered rescinding the Sex Discrimination Guidelines but not proposing regulations to replace them. This alternative would have the benefit of removing from the Code of Federal Regulations provisions that are inconsistent with current title VII principles, such as the fringe benefit provision discussed above. Contractors would no longer need to expend resources to reconcile conflicts between the Sex Discrimination Guidelines and the current requirements of title VII law. However, this alternative would create a vacuum of guidance for contractors, requiring them to expend resources for a different reason—for example, to pay for lawyers' or human resource

[111] See note 99, *supra.*

professionals' time to provide guidance regarding their nondiscrimination obligations. That *ad hoc* approach would reduce consistency across contractors' practices and could increase the incidence of unintended noncompliance, potentially harming job applicants and employees.

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business organizations and governmental jurisdictions subject to regulation.'' Public Law 96–354. To achieve that principle, the Act requires agencies promulgating proposed rules to prepare an initial regulatory flexibility analysis (IRFA) and to develop alternatives whenever possible, when drafting regulations that will have a significant impact on a substantial number of small entities. The Act requires the consideration for the impact of a proposed regulation on a wide-range of small entities including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposal or final rule would have a significant economic impact on a substantial number of small entities.[112] If the determination is that it would, then the agency must prepare a regulatory flexibility analysis as described in the RFA.[113]

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination and the reasoning should be clear.

OFCCP is publishing this initial regulatory flexibility analysis to aid stakeholders in understanding the small entity impacts of the proposed rule and to obtain additional information on the small entity impacts. OFCCP invites interested persons to submit comments on the following estimates, including the number of small entities affected by the NPRM, the compliance cost estimates, and whether alternatives exist that will reduce burden on small entities while still remaining consistent with the objective of the proposed rule.

Why OFCCP is Considering Action: OFCCP is publishing this proposed rule in order to align its existing regulations related to sex discrimination with current law and address their application to current workplace practices and issues.

Objectives of and Legal Basis for Rule: This proposed rule will provide guidance on how to comply with the nondiscrimination requirements of Executive Order 11246, as amended.

Compliance Requirements of the Proposed Rule, Including Reporting and Recordkeeping: As explained in this proposed rule, the Sex Discrimination Guidelines at 41 CFR part 60–20 set forth interpretations and guidelines for implementing Executive Order 11246's nondiscrimination and affirmative action requirements related to sex. The guidelines have not been updated in more than 40 years. This NPRM is intended to update the requirements to reflect current statutory and case law. The requirements in Executive Order 11246 generally apply to any business or organization that (1) holds a single Federal contract, subcontract, or federally assisted construction contract in excess of $10,000; (2) has Federal contracts or subcontracts that, combined, total in excess of $10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount.

This NPRM contains several provisions that could be considered to impose compliance requirements on contractors. Generally, contractors are prohibited from making employment decisions based upon gender, including decisions regarding compensation and fringe benefits. The NPRM updates the existing regulations to address, *inter alia,* discrimination on the basis of pregnancy, harassment, and employment decisions made on the basis of sex-based stereotypes. These revisions and updates are intended to bring OFCCP's regulations at part 60–20 in line with the current standards of title VII and thus reduce potential confusion among contractors, applicants and employees regarding which requirement applies to a particular situation.

All small entities subject to Executive Order 11246 would be required to comply with all of the provisions of the NPRM. Such compliance requirements are more fully described above in other portions of this preamble. The following section analyzes the cost of complying with proposed requirements in the NPRM.

Calculating Impact of the Proposed Rule on Small Business Firms: OFCCP must determine the compliance cost of this proposed rule on small contractor firms, and whether these costs will be significant for a substantial number of small contractor firms (*i.e.,* small business firms that enter into contracts with the Federal Government). If the estimated compliance costs for affected small contractor firms are less than three percent of small contractor firms' revenues, OFCCP considers it appropriate to conclude that this proposed rule will not have a significant economic impact on the small contractor firms covered by Executive Order 11246. While OFCCP has chosen three percent as our significance criterion, using this benchmark as an indicator of significant impact may overstate the significance of such an impact, since the costs associated with prohibiting sex discrimination against employees and job applicants are expected to be mitigated to some degree by the benefits of the proposed rule. The benefits are discussed more fully in the preamble of this NPRM.

The data sources used in the analysis of small business impact are the Small Business Administration's (SBA) Table of Small Business Size Standards,[114] the Current Population Survey (CPS), and the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB).[115] Since Federal contractors are not limited to specific industries, OFCCP assessed the impact of this NPRM across the 19 industrial classifications.[116] Because data limitations do not allow OFCCP to determine which of the small firms within these industries are Federal contractors, OFCCP assumes that these

[112] See 5 U.S.C. 603.

[113] *Id.*

[114] U.S. Small Business Administration, *Firm Size Data,* Statistics of U.S. Businesses, *available at http://www.sba.gov/advocacy/849/12162#susb* (last visited June 9, 2014).

[115] U.S. Census Bureau, *Statistics of U.S. Businesses:* Latest SUSB Annual Data, *available at http://www.census.gov/econ/susb/* (last accessed June 9, 2014).

[116] Agriculture, Forestry, Fishing, and Hunting Industry (North American Industry Classification System (NAICS) 11, Mining NAICS 21, Utilities NAICS 22, Construction NAICS 23, Manufacturing, NAICS 31–33, Wholesale Trade NAICS 42, Retail Trade NAICS 44–45, Transportation and Warehousing NAICS 48–49, Information NAICS 51, Finance and Insurance NAICS 52, Real Estate and Rental and Leasing NAICS 53, Professional, Scientific, and Technical Services NAICS 54, Management of Companies and Enterprises NAICS 55, Administrative and Support and Waste Management and Remediation Services NAICS 56, Educational Services NAICS 61, Healthcare and Social Assistance NAICS 62, Arts, Entertainment, and Recreation NAICS 71, Accommodation and Food Services NAICS 72, Other Services NAICS 81.

small firms are not significantly different from the small Federal contractors that will be directly affected by the proposed rule.

OFCCP used the following steps to estimate the cost of the proposed rule per small contractor firm as measured by a percentage of the total annual receipts. First, OFCCP used Census SUSB data that disaggregates industry information by firm size in order to perform a robust analysis of the impact on small contractor firms. OFCCP applied the SBA small business size standards to the SUSB data to determine the number of small firms in the affected industries. Then OFCCP used receipts data from the SUSB to calculate the cost per firm as a percent of total receipts by dividing the estimated annual cost per firm by the average annual receipts per firm. This methodology was applied to each of the industries, and the results by industry are presented in the summary tables below (see Tables 2–20).

In sum, the increased cost of compliance resulting from the proposed rule is *de minimis* relative to revenue at small contractor firms, no matter their size. All of the industries had an annual cost per firm as a percent of receipts of far less than three percent. For instance, the manufacturing industry cost is estimated to range from 0.00 percent for firms that have average annual receipts of approximately $985 million to 0.02 percent for firms that have average annual receipts of under $500,000. Management of companies and enterprises is the industry with the highest relative costs, with a range of 0.00 percent for firms that have average annual receipts of approximately $2 million to 0.30 percent for firms that have average annual receipts of under $24,000. Therefore, in no instance is the effect of the NPRM greater than three percent of total receipts, and in fact does not exceed 0.3 percent.

Although OFCCP estimates the compliance costs are less than three percent of the average revenue per small contractor firm for each of the 19 industries, OFCCP seeks data and feedback from small firms on the factors and assumptions used in this analysis, such as the data sources, small business industries, NAICS codes and size standards, and the annual costs per firm as a percent of receipts. OFCCP seeks information about which data sources should be used to estimate the number of Federal small subcontractors. OFCCP also seeks information about the potential compliance cost estimates, such as any differences in compliance costs for small businesses as compared to larger businesses and any compliance costs that may not have been included in this analysis.

Estimating the Number of Small Businesses Affected by the Rulemaking: OFCCP now sets forth its estimate of the number of small contractor firms actually affected by the proposed rule. This information is not readily available. The best source for the number of small contractor firms that are affected by this proposed rule is GSA's SAM. OFCCP used SAM data to estimate the number of affected small contractor firms since SAM data allow us to directly estimate the number of small contractor firms. Federal contractor status cannot be discerned from the SBA firm size data. It can only be used to estimate the number of small firms, not the number of small contractor firms. OFCCP used the SBA data to estimate the impact of the proposed regulation on a ''typical'' or ''average'' small firm in each of the 19 industries. OFCCP then assumed that a typical small firm is similar to a small contractor firm. OFCCP believes that this NPRM will not have a significant economic effect on a substantial number of small businesses.

Based on the most current SAM data available, if OFCCP defined ''small'' as fewer than 500 employees, then there are 328,552 small contractor firms. If OFCCP defined ''small'' as firms with less than $35.5 million in revenues, then there are 315,902 small contractor firms. Thus, OFCCP established a range of 315,902 to 328,552 as the total number of small contractor firms. Of course, not all of these contractor firms will be impacted by the proposed rule; only those contractor firms that have active contracts of more than $10,000 and are not otherwise covered by title VII or similar state or local anti-discrimination laws will be impacted. Thus this range is an overestimate of the number of firms affected by the proposed rule. As the proposed regulation applies to contractors covered by Executive Order 11246, OFCCP estimates that the range of small firms impacted is from 315,902 to 328,552.

Relevant Federal Rules Duplicating, Overlapping, or Conflicting with the Rule: As discussed in the preamble above, OFCCP recognizes that title VII, like the Executive Order, prohibits employers from discriminating against employees and job applicants on the basis of sex. Thus some overlap exists between the two laws.[117] In fact, OFCCP is proposing in this NPRM to eliminate conflict with title VII and current case law.

Alternatives to the Proposed Rule: As described above, OFCCP considered two alternatives. These alternatives would not be an effective or efficient way to enforce Executive Order 11246, as amended.

Differing Compliance and Reporting Requirements for Small Entities: This NPRM provides for no differing compliance requirements for small entities. In its implementation of Executive Order 11246, as amended, OFCCP does provide different reporting requirements for small entities—for example, contractor companies with fewer than 50 employees are not required to submit an EEO–1 Report or develop affirmative action programs. *See* 41 CFR 1.7, 1.40, and 2.1. In addition, the record retention period for smaller contractors is reduced. *See* 41 CFR 60–1.12.

Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements for Small Entities: This NPRM was drafted to state clearly the compliance requirements for all contractors subject to Executive Order 11246, as amended. The proposed rule does not contain any new reporting or recordkeeping requirements. The compliance provisions apply generally to all businesses covered by Executive Order 11246, as amended; no rational basis exists for creating an exemption from compliance requirements for small businesses. OFCCP makes available a variety of resources to employers for understanding their obligations and achieving compliance.

Use of Performance Rather Than Design Standards: This NPRM was written to provide clear guidelines to ensure compliance with the Executive Order requirements. Under the proposed rule, contractors may achieve compliance through a variety of means. OFCCP makes available a variety of resources to contractors for understanding their obligations and achieving compliance.

Exemption from Coverage of the Rule for Small Entities: Executive Order 11246, as amended, establishes its own exemption requirements; therefore, OFCCP has no authority to exempt small businesses from the requirements of the Executive Order.

[117] Unlike title VII, Executive Order 11246 contains the additional requirement that Federal contractors engage in affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, as well as their race, color, religion, sexual orientation, gender identity, or national origin.

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

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Table 2: Cost per small firm in the agriculture, forestry, fishing, and hunting industry.

Agriculture, Forestry, Fishing, and Hunting Industry							
Small Business Size Standard: $0.75 million – $27.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm [1]	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm [2]	Annual Cost per Firm as Percent of Receipts [3]
Firms with sales/receipts/revenue below $100,000	5,086	N/A	N/A	$71	$247,056,000	$48,576	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	8,939	21,523	2.4	$71	$2,231,355,000	$249,620	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	3,670	19,631	5.3	$71	$2,620,344,000	$713,990	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	3,230	30,944	9.6	$71	$4,975,078,000	$1,540,272	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	1,117	20,049	17.9	$71	$3,811,000,000	$3,411,817	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	289	8,997	31.1	$71	$1,730,128,000	$5,986,602	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	165	7,588	46.0	$71	$1,340,763,000	$8,125,836	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	112	6,130	54.7	$71	$1,288,588,000	$11,505,250	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	55	4,042	73.5	$71	$874,841,000	$15,906,200	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	44	5,325	121.0	$71	$858,761,000	$19,517,295	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	26	2,800	107.7	$71	$595,387,000	$22,899,500	0.00%

N/A = not available, not disclosed

[1] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the average number of employees per firm (2.4) was derived by dividing the total number of employees (21,523) by the number of firms (8,939).

[2] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the average receipts per firm ($249,620) was derived by dividing the total annual receipts ($2,231,355,000) by the number of firms (8,939).

[3] In the case of agriculture, forestry, fishing, and hunting firms with receipts of $100,000 to $499,999, the annual cost per firm as a percent of receipts (0.03 percent) was derived by dividing the annual cost per firm ($71) by the average receipts per firm ($249,620).

Table 3: Cost per small firm in the mining industry.

Mining Industry							
Small Business Size Standard: 500 employees							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm [1]	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm [2]	Annual Cost per Firm as Percent of Receipts [3]
Firms with 0-4 employees	11,223	17,874	1.6	$71	$6,809,517,000	$606,747	0.01%
Firms with 5-9 employees	3,186	21,314	6.7	$71	$6,304,810,000	$1,978,911	0.00%
Firms with 10-19 employees	2,451	33,344	13.6	$71	$9,092,457,000	$3,709,693	0.00%
Firms with 20-99 employees	2,775	107,447	38.7	$71	$32,035,288,000	$11,544,248	0.00%
Firms with 100-499 employees	690	102,299	148.3	$71	$38,463,690,000	$55,744,478	0.00%

[1] In the case of mining firms with 0-4 employees, the average number of employees per firm (1.6) was derived by dividing the total number of employees (17,874) by the number of firms (11,223).

[2] In the case of mining firms with 0-4 employees, the average receipts per firm ($606,747) was derived by dividing the total annual receipts ($6,809,517,000) by the number of firms (11,223).

[3] In the case of mining firms with 0-4 employees, the annual cost per firm as a percent of receipts (0.01 percent) was derived by dividing the annual cost per firm ($71) by the average receipts per firm ($606,747).

Table 4: Cost per small Firm in the utilities industry.

Utilities Industry							
Small Business Size Standard: 250 – 1,000 employees							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with 0-4 employees	3,212	6,181	1.9	$71	$7,238,519,000	$2,253,586	0.00%
Firms with 5-9 employees	1,020	6,546	6.4	$71	$4,373,888,000	$4,288,125	0.00%
Firms with 10-19 employees	513	6,722	13.1	$71	$5,657,251,000	$11,027,780	0.00%
Firms with 20-99 employees	870	38,602	44.4	$71	$27,513,924,000	$31,625,200	0.00%
Firms with 100-499 employees	309	52,294	169.2	$71	$53,091,123,000	$171,815,932	0.00%
Firms with 500+ employees[1]	199	512,412	2,574.9	$71	$475,894,489,000	$2,391,429,593	0.00%
[1] The small business size standard for several subsectors within the utilities industry is 750 or 1,000 employees; however, data are not disaggregated for firms with more than 500 employees.							

Table 5: Cost per small firm in the construction industry.

Construction Industry							
Small Business Size Standard: $15 million – $36.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	151,986	N/A	N/A	$71	$7,636,718,000	$50,246	0.14%
Firms with sales/receipts/revenue of $100,000 to $499,999	316,475	776,806	2.5	$71	$81,110,428,000	$256,293	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	124,214	642,823	5.2	$71	$88,028,843,000	$708,687	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	110,546	1,049,670	9.5	$71	$173,054,634,000	$1,565,454	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	47,962	864,701	18.0	$71	$167,758,626,000	$3,497,740	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	16,992	492,370	29.0	$71	$102,502,053,000	$6,032,371	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	7,801	308,512	39.5	$71	$66,977,650,000	$8,585,777	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	8,259	427,159	51.7	$71	$99,174,146,000	$12,008,009	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	4,354	289,441	66.5	$71	$73,881,089,000	$16,968,555	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	2,611	209,081	80.1	$71	$56,928,754,000	$21,803,429	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	1,621	150,754	93.0	$71	$43,119,720,000	$26,600,691	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	1,171	121,928	104.1	$71	$36,848,837,000	$31,467,837	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	831	94,903	114.2	$71	$30,307,198,000	$36,470,756	0.00%
N/A = not available, not disclosed							

Table 6: Cost per small firm in the manufacturing industry.

Manufacturing Industry							
Small Business Size Standard: 500 – 1,500 employees							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with 0-4 employees	114,635	213,123	1.9	$71	$46,236,636,000	$403,338	0.02%
Firms with 5-9 employees	53,500	358,110	6.7	$71	$53,036,608,000	$991,338	0.01%
Firms with 10-19 employees	44,939	612,113	13.6	$71	$97,897,887,000	$2,178,462	0.00%
Firms with 20-99 employees	55,603	2,288,585	41.2	$71	$440,739,564,000	$7,926,543	0.00%
Firms with 100-499 employees	13,945	2,445,779	175.4	$71	$634,737,830,000	$45,517,234	0.00%
Firms with 500+ employees[1]	4,079	7,402,462	1,814.8	$71	$4,019,587,050,000	$985,434,432	0.00%
[1] The small business size standard for many subsectors within the manufacturing industry is 750, 1,000, or 1,500 employees; however, data are not disaggregated for firms with more than 500 employees.							

Table 7: Cost per small firm in the wholesale trade industry.

Wholesale Trade Industry							
Small Business Size Standard: 100 employees							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with 0-4 employees	190,153	325,412	1.7	$71	$297,267,502,000	$1,563,307	0.00%
Firms with 5-9 employees	57,366	377,841	6.6	$71	$249,842,292,000	$4,355,233	0.00%
Firms with 10-19 employees	39,354	525,216	13.3	$71	$325,243,478,000	$8,264,560	0.00%
Firms with 20-99 employees	36,783	1,365,914	37.1	$71	$899,443,843,000	$24,452,705	0.00%

Table 8: Cost per small firm in the retail trade industry.

Retail Trade Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	98,659	N/A	N/A	$71	$5,008,702,000	$50,768	0.14%
Firms with sales/receipts/revenue of $100,000 to $499,999	251,705	727,585	2.9	$71	$67,380,242,000	$267,695	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	122,575	634,006	5.2	$71	$87,491,736,000	$713,781	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	120,985	1,019,672	8.4	$71	$190,373,341,000	$1,573,528	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	55,634	774,581	13.9	$71	$193,186,239,000	$3,472,449	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	19,594	418,263	21.3	$71	$117,223,823,000	$5,982,639	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	9,582	272,697	28.5	$71	$80,790,141,000	$8,431,449	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	9,824	366,889	37.3	$71	$115,236,313,000	$11,730,081	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	5,310	256,826	48.4	$71	$86,999,536,000	$16,384,093	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	3,498	201,289	57.5	$71	$72,964,681,000	$20,858,971	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	2,438	167,596	68.7	$71	$61,987,531,000	$25,425,566	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	1,835	144,987	79.0	$71	$55,162,317,000	$30,061,208	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	1,491	122,188	82.0	$71	$50,711,404,000	$34,011,673	0.00%
N/A = not available, not disclosed							

Table 9: Cost per small firm in the transportation and warehousing industry.

Transportation and Warehousing Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	40,510	N/A	N/A	$71	$1,939,749,000	$47,883	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	67,987	181,924	2.7	$71	$16,284,066,000	$239,517	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	22,377	151,019	6.7	$71	$15,756,895,000	$704,156	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	20,915	271,012	13.0	$71	$32,305,484,000	$1,544,608	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	9,183	223,156	24.3	$71	$31,359,227,000	$3,414,922	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	3,550	136,436	38.4	$71	$20,463,648,000	$5,764,408	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,800	91,408	50.8	$71	$14,261,554,000	$7,923,086	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,840	123,966	67.4	$71	$19,933,921,000	$10,833,653	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	988	85,367	86.4	$71	$14,057,603,000	$14,228,343	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	621	68,836	110.8	$71	$11,060,118,000	$17,810,174	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	429	51,989	121.2	$71	$8,257,805,000	$19,248,963	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	311	45,274	145.6	$71	$7,184,425,000	$23,101,045	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	235	32,922	140.1	$71	$5,902,588,000	$25,117,396	0.00%
N/A = not available, not disclosed							

Table 10: Cost per small firm in the information industry.

Information Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	15,960	N/A	N/A	$71	$767,642,000	$48,098	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	27,678	80,336	2.9	$71	$6,876,130,000	$248,433	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	10,311	67,954	6.6	$71	$7,260,927,000	$704,192	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	9,808	120,499	12.3	$71	$15,248,992,000	$1,554,750	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	4,508	100,331	22.3	$71	$15,472,313,000	$3,432,190	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,837	65,601	35.7	$71	$10,856,893,000	$5,910,121	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,018	46,846	46.0	$71	$8,447,070,000	$8,297,711	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,092	68,058	62.3	$71	$12,300,328,000	$11,264,037	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	601	49,812	82.9	$71	$9,293,544,000	$15,463,468	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	389	37,522	96.5	$71	$7,616,666,000	$19,580,118	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	270	30,523	113.0	$71	$6,512,265,000	$24,119,500	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	175	25,649	146.6	$71	$4,971,718,000	$28,409,817	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	136	21,553	158.5	$71	$4,082,897,000	$30,021,301	0.00%
N/A = not available, not disclosed							

Table 11: Cost per small firm in the finance and insurance industry.

Finance and Insurance Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	61,548	N/A	N/A	$71	$2,931,522,000	$47,630	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	118,169	308,539	2.6	$71	$29,379,598,000	$248,624	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	33,703	177,822	5.3	$71	$23,302,679,000	$691,413	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	23,023	222,822	9.7	$71	$35,135,972,000	$1,526,125	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	9,728	185,783	19.1	$71	$33,574,070,000	$3,451,282	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	4,108	118,100	28.7	$71	$24,483,200,000	$5,959,883	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	2,405	90,442	37.6	$71	$20,088,983,000	$8,353,007	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,820	148,252	52.6	$71	$33,267,079,000	$11,796,837	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,564	106,896	68.3	$71	$25,663,650,000	$16,408,983	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,028	87,611	85.2	$71	$21,843,640,000	$21,248,677	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	685	65,621	95.8	$71	$17,478,694,000	$25,516,342	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	515	58,481	113.6	$71	$15,619,023,000	$30,328,200	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	418	51,263	122.6	$71	$14,150,222,000	$33,852,206	0.00%
N/A = not available, not disclosed							

Table 12: Cost per small firm in the real estate and rental and leasing industry.

Real Estate and Rental and Leasing Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	86,219	N/A	N/A	$71	$4,165,673,000	$48,315	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	124,930	299,041	2.4	$71	$30,501,166,000	$244,146	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	39,747	191,958	4.8	$71	$27,836,936,000	$700,353	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	29,717	269,366	9.1	$71	$45,164,417,000	$1,519,818	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	10,013	181,600	18.1	$71	$33,652,743,000	$3,360,905	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	3,288	95,418	29.0	$71	$18,788,566,000	$5,714,284	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,553	62,482	40.2	$71	$12,221,244,000	$7,869,442	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,518	81,675	53.8	$71	$16,329,830,000	$10,757,464	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	771	48,442	62.8	$71	$11,037,708,000	$14,316,093	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	464	36,318	78.3	$71	$8,012,159,000	$17,267,584	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	365	32,555	89.2	$71	$7,621,190,000	$20,879,973	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	228	25,638	112.4	$71	$5,610,499,000	$24,607,452	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	161	17,743	110.2	$71	$4,144,542,000	$25,742,497	0.00%
N/A = not available, not disclosed							

Table 13: Cost per small firm in the professional, scientific, and technical services industry.

Professional, Scientific and Technical Services Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	207,967	N/A	N/A	$71	$9,968,674,000	$47,934	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	339,834	814,116	2.4	$71	$82,241,004,000	$242,003	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	102,144	584,473	5.7	$71	$71,850,790,000	$703,426	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	78,520	870,369	11.1	$71	$120,442,007,000	$1,533,902	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	28,337	631,182	22.3	$71	$97,339,397,000	$3,435,064	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	9,714	355,210	36.6	$71	$57,721,674,000	$5,942,112	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	4,863	245,206	50.4	$71	$40,592,738,000	$8,347,263	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	4,658	313,530	67.3	$71	$53,578,044,000	$11,502,371	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	2,338	211,940	90.7	$71	$36,728,134,000	$15,709,210	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,381	147,737	107.0	$71	$27,448,191,000	$19,875,591	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	954	122,039	127.9	$71	$22,622,723,000	$23,713,546	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	603	91,258	151.3	$71	$15,961,413,000	$26,470,005	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	511	83,414	163.2	$71	$15,941,272,000	$31,196,227	0.00%
N/A = not available, not disclosed							

Table 14: Cost per small firm in the management of companies and enterprises industry.

Management of Companies and Enterprises Industry							
Small Business Size Standard: $20.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	1,895	11,318	6.0	$71	$44,606,000	$23,539	0.30%
Firms with sales/receipts/revenue of $100,000 to $499,999	1,387	4,529	3.3	$71	$293,971,000	$211,947	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	964	5,082	5.3	$71	$373,917,000	$387,881	0.02%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	2,039	18,829	9.2	$71	$1,087,692,000	$533,444	0.01%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	2,242	26,723	11.9	$71	$1,698,014,000	$757,366	0.01%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,717	28,312	16.5	$71	$1,855,703,000	$1,080,782	0.01%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,258	22,469	17.9	$71	$1,711,464,000	$1,360,464	0.01%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,942	41,651	21.4	$71	$3,120,558,000	$1,606,878	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,423	34,363	24.1	$71	$2,997,064,000	$2,106,159	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,075	30,583	28.4	$71	$2,508,188,000	$2,333,198	0.00%

Table 15: Cost per small firm in the administrative and support and waste management and remediation services industry.

Administrative and Support, Waste Management and Remediation Services Industry							
Small Business Size Standard: $5.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	99,021	139,832	1.4	$71	$4,500,981,000	$45,455	0.16%
Firms with sales/receipts/revenue of $100,000 to $499,999	129,948	513,457	4.0	$71	$31,661,803,000	$243,650	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	40,405	409,563	10.1	$71	$28,444,220,000	$703,978	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	31,127	725,649	23.3	$71	$47,963,623,000	$1,540,901	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	12,294	678,340	55.2	$71	$42,093,718,000	$3,423,924	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	4,589	434,622	94.7	$71	$26,428,877,000	$5,759,180	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	2,411	311,321	129.1	$71	$19,304,673,000	$8,006,915	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,309	424,912	184.0	$71	$24,412,659,000	$10,572,828	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,266	292,501	231.0	$71	$17,408,483,000	$13,750,776	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	724	208,939	288.6	$71	$12,542,375,000	$17,323,722	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	528	174,359	330.2	$71	$10,341,768,000	$19,586,682	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	402	173,953	432.7	$71	$9,015,658,000	$22,427,010	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	267	122,013	457.0	$71	$6,382,657,000	$23,905,082	0.00%

Table 16: Cost per small firm in the educational services industry.

Educational Services Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	21,831	50,906	2.3	$71	$1,003,931,000	$45,986	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	27,938	158,913	5.7	$71	$6,788,475,000	$242,984	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	8,504	112,142	13.2	$71	$5,984,604,000	$703,740	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	8,465	213,786	25.3	$71	$13,376,338,000	$1,580,194	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	4,302	209,778	48.8	$71	$14,792,101,000	$3,438,424	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,588	117,648	74.1	$71	$9,314,307,000	$5,865,433	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	888	83,741	94.3	$71	$7,129,969,000	$8,029,244	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,003	127,781	127.4	$71	$11,306,008,000	$11,272,191	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	461	79,059	171.5	$71	$6,983,007,000	$15,147,521	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	355	73,045	205.8	$71	$6,992,060,000	$19,695,944	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	268	70,191	261.9	$71	$6,343,422,000	$23,669,485	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	172	60,202	350.0	$71	$5,119,182,000	$29,762,686	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	138	55,753	404.0	$71	$4,536,897,000	$32,876,065	0.00%

Table 17: Cost per small firm in the health care and social assistance industry.

Health Care and Social Assistance Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	107,112	162,265	1.5	$71	$5,064,756,000	$47,285	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	242,566	1,027,234	4.2	$71	$66,168,531,000	$272,786	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	125,095	1,054,985	8.4	$71	$88,227,442,000	$705,284	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	84,361	1,466,391	17.4	$71	$126,989,626,000	$1,505,312	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	26,466	1,107,445	41.8	$71	$91,034,690,000	$3,439,685	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	9,453	712,840	75.4	$71	$56,541,818,000	$5,981,362	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	4,867	501,258	103.0	$71	$41,063,966,000	$8,437,223	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	5,198	760,603	146.3	$71	$61,116,459,000	$11,757,687	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	2,468	497,184	201.5	$71	$40,851,963,000	$16,552,659	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,374	347,358	252.8	$71	$29,140,498,000	$21,208,514	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	978	284,827	291.2	$71	$25,026,728,000	$25,589,701	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	665	230,360	346.4	$71	$20,167,268,000	$30,326,719	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	485	185,982	383.5	$71	$16,744,181,000	$34,524,085	0.00%

Table 18: Cost per small firm in the arts, entertainment, and recreation industry.

Arts, Entertainment, and Recreation Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	33,186	53,994	1.6	$71	$1,569,733,000	$47,301	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	46,210	199,647	4.3	$71	$11,295,277,000	$244,434	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	15,493	162,642	10.5	$71	$10,894,947,000	$703,217	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	12,148	259,480	21.4	$71	$18,531,141,000	$1,525,448	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	4,674	209,762	44.9	$71	$16,040,448,000	$3,431,846	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,718	120,586	70.2	$71	$9,983,571,000	$5,811,159	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	806	74,628	92.6	$71	$6,466,756,000	$8,023,270	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	660	77,131	116.9	$71	$7,102,423,000	$10,761,247	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	344	49,061	142.6	$71	$4,965,644,000	$14,435,012	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	224	40,309	180.0	$71	$4,136,002,000	$18,464,295	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	155	33,220	214.3	$71	$3,428,904,000	$22,121,961	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	115	28,855	250.9	$71	$2,873,044,000	$24,982,991	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	84	25,163	299.6	$71	$2,569,574,000	$30,590,167	0.00%

Table 19: Cost per small firm in the accommodation and food services industry.

Accommodation and Food Services Industry							
Small Business Size Standard: $7.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	99,592	207,093	2.1	$71	$4,845,922,000	$48,658	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	216,446	1,349,187	6.2	$71	$55,536,558,000	$256,584	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	79,875	1,260,097	15.8	$71	$55,913,962,000	$700,018	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	56,476	1,777,649	31.5	$71	$84,117,236,000	$1,489,433	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	14,095	896,373	63.6	$71	$46,231,300,000	$3,279,979	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	3,720	403,866	108.6	$71	$21,249,810,000	$5,712,315	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	1,621	244,772	151.0	$71	$12,835,230,000	$7,918,094	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	1,628	340,741	209.3	$71	$17,984,834,000	$11,047,195	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	859	252,279	293.7	$71	$13,054,878,000	$15,197,763	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	446	170,201	381.6	$71	$8,420,579,000	$18,880,222	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	363	153,594	423.1	$71	$7,987,110,000	$22,003,058	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	241	115,452	479.1	$71	$6,405,041,000	$26,576,934	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	170	90,301	531.2	$71	$4,832,335,000	$28,425,500	0.00%

Table 20: Cost per small firm in the other services (except public administration) industry.

Other Services Industry							
Small Business Size Standard: $5.5 million – $38.5 million							
	Number of Firms	Total Number of Employees	Average Number of Employees per Firm	Annual Cost per Firm	Annual Receipts	Average Receipts per Firm	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	195,234	322,002	1.6	$71	$9,308,948,000	$47,681	0.15%
Firms with sales/receipts/revenue of $100,000 to $499,999	307,613	1,225,144	4.0	$71	$75,113,021,000	$244,180	0.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	87,833	756,186	8.6	$71	$61,131,552,000	$695,998	0.01%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	55,883	926,035	16.6	$71	$84,065,314,000	$1,504,309	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	16,522	531,104	32.1	$71	$55,620,907,000	$3,366,475	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	4,967	252,838	50.9	$71	$28,838,406,000	$5,806,001	0.00%
Firms with sales/receipts/revenue of $7,500,000-$9,999,999	2,326	151,376	65.1	$71	$18,502,407,000	$7,954,603	0.00%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	2,114	173,393	82.0	$71	$23,140,184,000	$10,946,161	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,005	104,997	104.5	$71	$14,696,909,000	$14,623,790	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	620	73,209	118.1	$71	$11,076,548,000	$17,865,400	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	405	50,974	125.9	$71	$8,159,095,000	$20,145,914	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	274	42,041	153.4	$71	$6,643,223,000	$24,245,339	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	227	37,259	164.1	$71	$5,392,740,000	$23,756,564	0.00%

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Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that OFCCP consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid OMB control number.

OFCCP has determined that there is no new requirement for information collection associated with this proposed rule. This proposed rule clarifies and updates current part 60–20 and removes outdated provisions so that the requirements conform to current sex discrimination law. The information collection requirements contained in the existing Executive Order 11246 regulations are currently approved under OMB Control No. 1250–0001 (Construction Recordkeeping and Reporting Requirements) and OMB Control No. 1250–0003 (Recordkeeping and Reporting Requirements—Supply and Service). Consequently, this proposed rule does not require review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this NPRM does not include any Federal mandate that may result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

OFCCP has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This proposed rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Effects on Families

The undersigned hereby certifies that the NPRM would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999. To the contrary, by better ensuring that working mothers do not suffer sex discrimination in compensation, benefits, or other terms and conditions of employment, and that working fathers do not suffer

discrimination on the basis of sex-based stereotypes about caregiver responsibilities, the NPRM would have a positive effect on the economic well-being of families, especially of families headed by single mothers.

Executive Order 13045 (Protection of Children)

This NPRM would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment

A review of this NPRM in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.;* and DOL NEPA procedures, 41 CFR part 11, indicates the NPRM would not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

Executive Order 13211 (Energy Supply)

This NPRM is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12630 (Constitutionally Protected Property Rights)

This NPRM is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

Executive Order 12988 (Civil Justice Reform Analysis)

This NPRM was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The NPRM was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 41 CFR Part 60–20

Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Government procurement, Labor, Sex, Women.

Patricia A. Shiu,

Director, Office of Federal Contract Compliance Programs.

For the reasons set forth in the preamble, OFCCP proposes to revise 41 CFR part 60–20 to read as follows:

PART 60–20—DISCRIMINATION ON THE BASIS OF SEX

Sec.

60–20.1 Purpose.
60–20.2 General prohibitions.
60–20.3 Sex as a *bona fide* occupational qualification.
60–20.4 Discriminatory compensation.
60–20.5 Discrimination on the basis of pregnancy, childbirth, or related medical conditions.
60–20.6 Other fringe benefits.
60–20.7 Employment decisions made on the basis of sex-based stereotypes.
60–20.8 Harassment and hostile work environments.

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339 as amended by E.O. 11375, 32 FR 14303, 3 CFR 1966–1970 Comp., p. 684; E.O. 12086, 43 FR 46501, 3 CFR 1978 Comp., p. 230; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13672, 79 FR 42971.

§ 60–20.1 Purpose.

The purpose of this part is to set forth specific requirements that covered Federal Government contractors and subcontractors, including those performing work under federally-assisted construction contracts (''contractors''),[1] must meet in fulfilling their obligations under Executive Order 11246, as amended, to ensure nondiscrimination on the basis of sex in employment. These regulations are to be read in conjunction with the other regulations implementing Executive Order 11246, as amended, set forth in parts 60–1, 60–2, 60–3, 60–4, and 60–30 of this chapter.

§ 60–20.2 General prohibitions.

(a) *In general.* It is unlawful for a contractor to discriminate against any employee or applicant for employment because of sex. The term sex includes, but is not limited to pregnancy, childbirth, or related medical conditions; gender identity; and transgender status.

(b) *Disparate treatment.* Unless sex is a *bona fide* occupational qualification reasonably necessary to the normal operation of a contractor's particular business or enterprise, the contractor may not make any distinction based on sex in recruitment, hiring, firing, promotion, compensation, hours, job assignments, training, benefits, or other terms, conditions, or privileges of employment. Such unlawful sex-based discriminatory practices include, but are not limited to, the following:

(1) Making a distinction between married and unmarried persons that is not applied equally to both sexes;

(2) Denying women with children an employment opportunity that is available to men with children;

(3) Firing, or otherwise treating adversely, unmarried women, but not unmarried men, who become parents;

(4) Imposing any differences in retirement age or other terms, conditions, or privileges of retirement on the basis of sex;

(5) Restricting job classifications on the basis of sex;

(6) Maintaining seniority lines and lists based upon sex;

(7) Recruiting or advertising for individuals for certain jobs on the basis of sex, including through use of gender-specific terms for jobs (such as ''lineman'');

(8) Distinguishing on the basis of sex in apprenticeship or other formal or informal training programs; in other opportunities such as networking, mentoring, sponsorship, individual development plans, rotational assignments, and succession planning programs; or in performance appraisals that may provide the basis of subsequent opportunities;

(9) Making any facilities and employment-related activities available only to members of one sex, except that if the contractor provides restrooms or changing facilities, the contractor must provide separate or single-user restrooms or changing facilities to assure privacy between the sexes;

(10) Denying transgender employees access to the bathrooms used by the gender with which they identify; and

(11) Treating an employee or applicant for employment adversely because he or she has undergone, is undergoing, or is planning to undergo sex-reassignment surgery or other processes or procedures designed to facilitate the adoption of a sex or gender other than the individual's designated sex at birth.

(c) *Disparate impact.* Employment policies or practices that have an adverse impact on the basis of sex, and are not job related and consistent with business necessity, violate Executive Order 11246, as amended, and this part. Examples of policies or practices that may violate Executive Order 11246 in terms of their disparate impact on the basis of sex include, but are not limited to:

(1) Minimum height and/or weight qualifications that are not necessary to the performance of the job and that negatively impact women substantially more than men;

[1] This part also applies to entities that are ''applicants'' for Federal assistance involving a construction contract as defined in part 60–1 of this title.

(2) Strength requirements that exceed the strength necessary to perform the job in question and that negatively impact women substantially more than men;

(3) A policy prohibiting large equipment operators from using a restroom while on the job, which adversely impacts women, who may require the use of restrooms more than men; and

(4) Conditioning entry into an apprenticeship program on passing a scored written test that has an adverse impact on women where the contractor cannot establish the validity of the test consistent with the Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3.

§ 60–20.3 Sex as a bona fide occupational qualification.

Contractors may not hire and employ employees on the basis of sex unless sex is a *bona fide* occupational qualification (BFOQ) reasonably necessary to the normal operation of the contractor's particular business or enterprise.

§ 60–20.4 Discriminatory compensation.

Compensation may not be based on sex. Contractors may not engage in any employment practice that denies equal wages, benefits, or any other forms of compensation, or equal access to earnings opportunities, on the basis of sex, on either an individual or systemic basis, including but not limited to the following:

(a) Contractors may not pay different compensation to similarly situated employees on the basis of sex. For purposes of evaluating compensation differences, the determination of similarly situated employees is case specific. Relevant factors in determining similarity may include tasks performed, skills, effort, levels of responsibility, working conditions, job difficulty, minimum qualifications, and other objective factors. In some cases, employees are similarly situated where they are comparable on some of these factors, even if they are not similar on others.

(b) Contractors may not grant or deny higher paying wage rates, salaries, positions, job classifications, work assignments, shifts, or development opportunities, or other opportunities on the basis of sex. Contractors may not grant or deny training, work assignments, or other opportunities that may lead to advancement in higher paying positions on the basis of sex.

(c) Contractors may not provide or deny earnings opportunities because of sex, for example, by denying women equal opportunity to obtain regular and/or overtime hours, commissions, pay increases, incentive compensation, or any other additions to regular earnings.

(d) Contractors may not implement compensation practices, including performance review systems, that have an adverse impact on the basis of sex and are not shown to be job related and consistent with business necessity.

(e) A contractor will be in violation of Executive Order 11246 and this part any time it pays wages, benefits, or other compensation that is the result in whole or in part of the application of any discriminatory compensation decision or other practice described in this section.

§ 60–20.5 Discrimination on the basis of pregnancy, childbirth, or related medical conditions.

(a) Discrimination on the basis of pregnancy, childbirth, or related medical condition, including childbearing capacity, is a form of unlawful sex discrimination. Contractors must treat people of childbearing capacity and those affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe-benefit programs, as other persons not so affected, but similar in their ability or inability to work. Related medical conditions include, but are not limited to, lactation; disorders directly related to pregnancy, such as preeclampsia (pregnancy-induced high blood pressure), placenta previa, and gestational diabetes; symptoms such as back pain; complications requiring bed rest; and the after-effects of a delivery. A contractor is not required to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or except where medical complications have arisen from an abortion, provided that nothing herein precludes a contractor from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

(b) Examples of unlawful pregnancy discrimination include, but are not limited to:

(1) Refusing to hire pregnant people or people of childbearing capacity, or otherwise subjecting such applicants or employees to adverse employment treatment, because of their pregnancy or childbearing capacity;

(2) Firing a female employee or requiring her to go on leave because the employee becomes pregnant or has a child;

(3) Limiting a pregnant employee's job duties based solely on the fact that she is pregnant, or requiring a doctor's note in order for a pregnant woman to continue employment while pregnant when doctors' notes are not required for employees who are similarly situated;

(4) Providing employees with health insurance that does not cover hospitalization and other medical costs for pregnancy, childbirth, or related medical conditions, including contraceptive coverage, to the same extent that hospitalization and other medical costs are covered for other medical conditions; and

(5) Denying an alternative job assignment, modified duties, or other accommodations to a pregnant employee who is temporarily unable to perform some of her job duties because of pregnancy, childbirth, or related medical conditions when such assignments, modifications, or other accommodations are provided, or are required to be provided by a contractor's policy or by other relevant laws, to other employees whose abilities or inabilities to perform their job duties are similarly affected.

(c) *Leave*—(1) *In general.* To the extent that a contractor provides family, medical, or other leave, such leave must not be denied or provided differently on the basis of sex.

(2) *Disparate treatment.* (i) A contractor must provide job-guaranteed medical leave, including paid sick leave, for employees' pregnancy, childbirth, or related medical conditions on the same terms that medical or sick leave is provided for medical conditions that are similar in their effect on employees' ability to work.

(ii) A contractor must provide job-guaranteed family leave, including any paid leave, for male employees on the same terms that family leave is provided for female employees.

(3) *Disparate impact.* Contractors that have employment policies or practices under which insufficient or no medical or family leave is available must ensure that such policies or practices do not have an adverse impact on the basis of sex unless they are shown to be job related and consistent with business necessity.

§ 60–20.6 Other fringe benefits.

(a) It shall be an unlawful employment practice for a contractor to discriminate on the basis of sex with regard to fringe benefits.

(b) As used herein, ''fringe benefits'' includes, but is not limited to, medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; dependent care assistance; educational assistance; employee discounts; stock options; lodging; meals; moving expense

reimbursements; retirement planning services; and transportation benefits.

(c) The greater cost of providing a fringe benefit to members of one sex is not a defense to a contractor's failure to provide benefits equally to members of both sexes.

§ 60–20.7 Employment decisions made on the basis of sex-based stereotypes.

Contractors must not make employment decisions on the basis of sex-based stereotypes, such as stereotypes about how males and/or females are expected to look, speak, or act. Such employment decisions are a form of sex discrimination prohibited by Executive Order 11246, as amended. Examples of discrimination based on sex-based stereotyping include, but are not limited to:

(a) Adverse treatment of an employee or applicant for employment because of that individual's failure to comply with gender norms and expectations for dress, appearance and/or behavior, such as:

(1) Failure to promote a woman, or otherwise subjecting her to adverse employment treatment, based on sex stereotypes about dress, including wearing jewelry, make-up, or high heels;

(2) Harassment of a man because he is considered insufficiently masculine, or effeminate; and

(3) Adverse treatment of an employee because he or she does not conform to sex-role expectations by being in a relationship with a person of the same sex.

(b) Adverse treatment of an employee or applicant for employment because of his or her actual or perceived gender identity or transgender status.

(c) Adverse treatment of an employee or applicant for employment based on sex-based stereotypes about caregiver responsibilities. For example, adverse treatment of a female employee because of a sex-based assumption that she has (or will have) family caretaking responsibilities, and that those responsibilities will interfere with her work performance, is discrimination based on sex. Other examples of such discriminatory treatment include, but are not limited to:

(1) Adverse treatment of a male employee because he has taken or is planning to take leave to care for his newborn or recently adopted or foster child based on the sex-stereotyped belief that women and not men should care for children;

(2) Denying opportunities to mothers of children based on the sex-stereotyped belief that women with children should not or will not work long hours, regardless of whether the contractor is acting out of hostility or belief that it is acting in the employee's or her children's best interest.

(3) Evaluating the performance of female employees who have family caregiving responsibilities adversely, based on the sex-based stereotype that women are less capable or skilled than their male counterparts who do not have such responsibilities.

§ 60–20.8 Harassment and hostile work environments.

(a) Harassment on the basis of sex is a violation of Executive Order 11246, as amended. Unwelcome sexual advances, requests for sexual favors, offensive remarks about a person's sex, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) Harassment because of sex includes sexual harassment (including sexual harassment based on gender identity); harassment based on pregnancy, childbirth, or related medical conditions; and harassment that is not sexual in nature but that is because of sex (including harassment based on gender identity).

(c) Though not required by this part, to ensure an environment in which all employees feel safe, welcome, and treated fairly, it is a best practice for a contractor to develop and implement procedures to ensure its employees are not harassed because of sex. Examples of such procedures include:

(1) Communicating to all personnel that harassing conduct will not be tolerated;

(2) Providing anti-harassment training to all personnel;

(3) Establishing and implementing procedures for handling and resolving complaints about harassment and intimidation based on sex.

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Part IV

Department of Homeland Security

Coast Guard

33 CFR Parts 62, 66, 101, et al.

46 CFR Parts 4 and 148

Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 62, 66, 101, 110, 117, 118, 151, 160, 161, 164, and 165

46 CFR Parts 4 and 148

[Docket No. USCG–2005–21869]

RIN 1625–AA99

Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: Consistent with statutory requirements and provisions, the Coast Guard is expanding the applicability of notice of arrival (NOA) and automatic identification system (AIS) requirements to include more commercial vessels. This final rule amends the applicability of notice of arrival requirements to include additional vessels, sets forth a mandatory method for electronic submission of NOAs, and modifies related reporting content, timeframes, and procedures. This final rule also extends the applicability of AIS requirements beyond Vessel Traffic Service (VTS) areas to all U.S. navigable waters, and requires that additional commercial vessels install and use AIS, consistent with statutory requirements, and in limited cases, the Secretary's discretionary authority. These changes will improve navigation safety, enhance our ability to identify and track vessels, and heighten our overall maritime domain awareness (MDA), thus helping us address threats to maritime transportation safety and security.

DATES: This final rule is effective March 2, 2015, except for amendments to 33 CFR part 160 which become effective April 30, 2015, with the further exception of § 160.204(a)(6), which is effective April 30, 2015 through December 31, 2015; and except for §§ 160.204(a)(5)(vii), 160.205, 160.208(a) and (c), and 164.46(b) and (c), which contain collection of information requirements that have not yet been approved by the Office of Management and Budget (OMB). The Coast Guard will publish a document in the **Federal Register** announcing the effective date of these four collection-of-information related sections. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register on March 2, 2015.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2005–21869 and are available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2005–21869 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on the NOA portion of this final rule, call or email Lieutenant Commander Michael Lendvay, Office of Commercial Vessel Compliance (CG–CVC), Coast Guard; telephone 202–372–1218, email *Michael.D.Lendvay@uscg.mil.* If you have questions on the AIS portion of this final rule, call or email Mr. Jorge Arroyo, Office of Navigation Systems (CG–NAV–2), Coast Guard; telephone 202–372–1563, email *Jorge.Arroyo@uscg.mil.* Finally, if you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Abbreviations

AC Alternating Current
AIS Automatic Identification System
AIS AtoN Automatic Identification System Aids to Navigation
AMS Automated Manifest System
ANF Advance Notice Form
API American Petroleum Institute
APIS Advance Passenger Information System
ASM Application-specific messaging
ASTM American Society for Testing and Materials
AtoN Aids to Navigation
CBP U.S. Customs and Border Protection
CDC Certain Dangerous Cargo
CFR Code of Federal Regulations
CMTS Committee on the Maritime Transportation System

COP Common Operating Picture
COTP Captain of the Port
CSR Continuous Synopsis Record
DGPS Differential Global Positioning System
DHS U.S. Department of Homeland Security
ECDIS Electronic Chart Display and Information System
ECS Electronic Chart System
eNOAD Electronic Notice of Arrival and Departure
FCC Federal Communications Commission
FILS Federal/Industry Logistics Standardization
FRFA Final Regulatory Flexibility Analysis
IMO International Maritime Organization
INS mmigration and Naturalization Service
IRFA Initial Regulatory Flexibility Analysis
IRVMC Inland River Vessel Movement Center
ISM International Safety Management
ISPS International Ship and Port Facility Security
ISSC International Ship Security Certificate
ITU International Telecommunications Union
LOOP Louisiana Offshore Oil Port
LRIT Long Range Identification and Tracking
MARPOL International Convention for the Prevention of Pollution from Ships
MARSEC Maritime Security
MDA Maritime Domain Awareness
MEPC IMO Marine Environment Protection Committee
MISLE Marine Information for Safety and Law Enforcement
MKD Minimal Keyboard Display
MMSI Maritime Mobile Service Identity
MODU Mobile Offshore Drilling Unit
MTSA Maritime Transportation Security Act of 2002
NAICS North American Industry Classification System
NAIS Nationwide Automatic Identification System
NARA National Archives and Records Administration
NAVSAC Navigation Safety Advisory Council
NEMA National Electrical Manufacturers Association
NMEA National Marine Electronics Association
NOA Notice of Arrival
NOA OCS Notice of Arrival on the Outer Continental Shelf
NOAD Notice of Arrival and Departure
NOD Notice of Departure
NPRM Notice of Proposed Rulemaking
N–RAT National Risk Assessment Tool
NVMC National Vessel Movement Center
OCS Outer Continental Shelf
OMB Office of Management and Budget
OSRV Oil Spill Response Vessel
OSV Offshore Supply Vessel
PWSA Ports and Waterways Safety Act
RA Regulatory Analysis
RFA Regulatory Flexibility Act
RTCM Radio Technical Commission for Maritime Services
§ Section
SAFE Port Act Security and Accountability for Every Port Act of 2006
SBA Small Business Administration
SN/Circ. (IMO) Safety of Navigation Circular
SNPRM Supplemental Notice of Proposed Rulemaking
SOLAS International Convention for the Safety of Life at Sea
TWIC Transportation Worker Identification Credential
ULC Universal Location Code
U.S.C. United States Code
VMRS Vessel Movement Reporting System
VSL Value of Statistical Life
VTC Vessel Traffic Center
VTS Vessel Traffic Service
WDR Waste Delivery Receipt
WMD Weapon of Mass Destruction
WME Weapon of Mass Effect

II. Executive Summary and Regulatory History

A. Executive Summary

1. Purpose and Authority

The Coast Guard is expanding the applicability of notice of arrival (NOA) and automatic identification system (AIS) requirements to include more commercial vessels, consistent with statutory requirements and provisions. The Coast Guard is finalizing a narrow expansion of the applicability beyond the Congressionally-mandated requirements using the Secretary's discretionary authority. The purpose of these changes is to improve navigation safety, enhance the Coast Guard's ability to identify and track vessels, and heighten the Coast Guard's overall situational and maritime domain awareness (MDA), which will enhance mariner's navigation safety and the Coast Guard's ability to address threats to maritime transportation security.

The authority for the Coast Guard to issue AIS and NOA requirements stems from the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221 *et seq.*), which allows the Secretary to require the installation of specified navigation and communications equipment on vessels that operate within a vessel traffic service (VTS) area, pre-arrival notices, and other measures to protect navigation and the marine environment. The authority for the Coast Guard to issue AIS-related requirements also comes from the Maritime Transportation Security Act of 2002 (MTSA), Public Law 107–295, which directs that AIS be required on certain commercial vessels operating on U.S. navigable waters. See specifically, 46 U.S.C. 70114.

2. Overview of the Final Rule

This final rule amends the applicability of notice of arrival (NOA) requirements to include additional vessels (commercial vessels 300 gross tons or less coming from a foreign port or place), sets forth a mandatory method for electronic NOAD submission, and modifies related reporting content, timeframes, and procedures. This final rule also extends the applicability of AIS requirements beyond VTS areas—to all U.S. navigable waters—and to non-VTS users.

3. Costs and Benefits

The cost of this final rule will be borne by approximately 18,000 U.S.-flag and foreign-flag vessel owners or operators. We estimate the total discounted cost of the final rule to be $46.1 million over the 10-year period of analysis at a 7-percent discount rate, and we estimate that 98 percent of this cost will be borne by U.S. vessels owners and operators. The NOA burden on industry from this rule was minimized to the maximum extent possible and includes three new information fields, consistent with the objectives of this rule. No new government resources are needed to process the NOA information or AIS-related requirements of this rule. The AIS-related requirements of this rule were not applied to low risk, smaller vessels. Based on current estimates of the risks and benefits, expanding AIS installation requirements is not justified for smaller vessels that are not moving certain dangerous cargo (CDC) or flammable or combustible liquid cargo in bulk.

We expect benefits of this final rule to include improved security, safety and environmental protection. The Coast Guard believes that this final rule will enhance maritime and navigational safety through a synergistic effect of NOA and AIS, and will strengthen maritime security. Specifically, when reliable NOA data is combined with other data from sources such as AIS and long-range identification and tracking (LRIT) reporting, a common operating picture is formed in which vessel-specific movements to, from, or in U.S. ports and waterways can be monitored in near-real time. This will enable the Coast Guard to filter data from collection mechanisms that do not require vessel compliance, such as radar, and thereby enhance our ability to rapidly detect, identify, and track suspicious vessels. This assists the Coast Guard and our other interagency partners in decision-making regarding homeland security, and affords decision-makers an opportunity to prioritize resources and meet mission requirements while maintaining MDA.

Improving MDA will also result in improvements to maritime and navigational safety. We assess additional improvements to safety and environmental protection quantitatively, given the existence of historic casualty

data from which to develop such estimates. From the casualty history we can assess the mitigation of fatalities, injuries, property damage, and environmental impacts as a result of oil spills from casualty incidents. We estimate the total discounted benefit (injuries and fatalities avoided) for the AIS portion of the final rule, derived from marine casualty cases for the period 1996 to 2010, to be between $25.1 and $31.2 million, using $9.1 million for the value of statistical life (VSL) at 7- and 3-percent discount rates, respectively. We expect the AIS portion of this final rule to prevent on average 14 barrels of oil (undiscounted) from being spilled annually, or between 85 and 106 barrels at 7- and 3-percent discount rates, respectively, over the 10-year period of analysis.

B. Regulatory History

On December 16, 2008, we published a notice of proposed rulemaking (NPRM) titled ''Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System'' in the **Federal Register** (73 FR 76295). The preamble of that NPRM contains an extensive post-September 11, 2001, history of NOA and AIS regulatory actions. We provided a 4-month comment period for the proposed rule. We received 91 written submissions, and 27 persons made oral statements at our public meetings. There were approximately 475 comments in response to our NPRM.

Public meetings were requested and two were held. We held the first meeting in Washington, DC, on March 5, 2009, and the second in Seattle, WA, on March 25, 2009. *See* 74 FR 3534, January 21, 2009, and 74 FR 9071, March 2, 2009.

III. Basis and Purpose

This final rule makes revisions to NOAD regulations in 33 CFR part 160 that are necessary to require the submission of comprehensive and timely information on vessels entering U.S. ports and transiting U.S. waters. Also, the revision requiring electronic submissions will expedite processing of NOAD information. Prompt receipt of this information about a vessel and its voyage, cargo, and persons on board, and the operational condition of its navigation equipment will assist us in—

- Preventing damage to structures on, in, or adjacent to the navigable waters of the United States; and
- Protecting those navigable waters.

The Secretary of the Department of Homeland Security has delegated to the Coast Guard authority from the PWSA (33 U.S.C. 1221 *et seq.*). Under this authority, the Coast Guard may promulgate regulations to—

- Require receipt of pre-arrival messages from vessels destined for a U.S. port or place in sufficient time to permit advance vessel traffic planning prior to port entry.
- Protect the navigable waters of the United States, as well as bridges over those waters, and land structures and shore area immediately adjacent to such waters, including measures involving the movement of explosives or other dangerous articles and substances.

See specifically 33 U.S.C. 1223(a)(5), 1225, and 1231.

This final rule also amends AIS and AIS-related regulations in 33 CFR parts 62, 66, 161, 164, and 165 necessary to implement section 102 of MTSA, Public Law 107–295, 116 Stat. 2064, which directs that AIS be installed and operating on most commercial vessels on the navigable waters of the United States. *See* 46 U.S.C. 70114. In addition, this final rule implements certain mandatory provisions of the International Convention for the Safety of Life at Sea, 1974, (SOLAS), as amended. *See* specifically SOLAS, Chapter V, regulation 19.2.4, which requires all ships of 300 gross tonnage and upwards engaged on international voyages, cargo ships of 500 gross tonnage and upwards not engaged on international voyages, and passenger ships irrespective of size, to be fitted with AIS; and regulation 1.4, which gives the United States some discretion in implementing these AIS requirements for ships. As a Contracting Government to SOLAS, the United States has a responsibility to implement mandatory SOLAS provisions such as these AIS, SOLAS Chapter V provisions. *See* SOLAS Art. I, SOLAS, 32 U.S.T. 47, and the Protocol of 1978 relating to SOLAS, 32 U.S.T. 5577. As with NOAD data, AIS data also assist us in traffic management, safety, and security.

The combination of these NOA and AIS revisions will help provide a more comprehensive picture of the maritime domain. These NOA and AIS data go into a common operating picture (COP) that uses input from various sources to provide both a visual display of marine traffic and a display of each vessel's accompanying information. This system allows us to detect anomalies in these data elements. Specifically, NOA provides the stated intent of the vessel, which AIS complements by providing actual movement and a historical pattern of behavior. Combining the two, along with non-cooperative means of detection/tracking, provides a check on both, and thus an early indication of abnormal behavior, hazardous situations and/or potential security incidents.

IV. Background

The NOA- and AIS-specific regulations appear in 33 CFR part 160 subpart C and § 164.46, respectively. AIS-related regulations appear in 33 CFR parts 62, 66, 161, and 165. As noted, the preamble of the NPRM published December 16, 2008, contains an extensive post-September 11, 2001, history of NOA and AIS regulatory actions. *See* 73 FR 76298–76300.

V. Summary of Changes From NPRM

We made changes from the proposed rule to reduce the burden of the final rule, to more closely align it with statutory requirements, to make it more effective, and to clarify it. We made many of these changes in response to public comments, which we discuss in Section VI, ''Discussion of Comments and Changes.'' If the rationale for the change appears in Section VI, then we point to the specific location of that response in this Section V summary. Otherwise, we provide the rationale for the change by section number here in this summary of NPRM-to-final-rule changes.

- We added a section to 33 CFR part 62 and amended two sections in part 66 to address a comment requesting that we expand AIS carriage to offshore fixed structures. In our NPRM, we encouraged broader use of AIS, but this comment highlighted a particular shortcoming regarding offshore fixed structures. Our proposed rule addressed mobile shipboard devices such as AIS Class A or B, but not offshore structures or AIS Aids to Navigation (AIS AtoN) systems which are best suited for fixed position deployment, such as on offshore oil platforms. Existing AtoN regulations (see 33 CFR 66.01–1 Basic Provisions) bar the use of AIS as a Private Aid to Navigation, and thus preclude the use of an AIS AtoN on certain fixed structures. This prohibition in the current AtoN regulations is inconsistent with our stated objective of broadening the use of AIS. An AIS AtoN would provide position, name, and health status of the aid, such as ''on station, watching properly.'' These amendments to parts 62 and 66, which allow for enhanced MDA and improved navigation safety, would not require anyone subject to our rule to establish an AIS AtoN, they would merely make that option available.
- We amended 33 CFR 118.120 for the same reasons we amended part 66, to allow the use of an AIS AtoN on certain fixed structures, here

specifically bridges. We added the following sentence to § 118.120: The District Commander may authorize the use of Automatic Identification System Aids to Navigation in lieu of or in addition to a racon.

• We removed a technical amendment to § 160.5(d) because that change was implemented in a separate rulemaking, ''Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments,'' in 2010. *See* 75 FR 36273, 36287, June 25, 2010.

• In the NOA *General* section, § 160.201, we inserted a note to inform readers that notice-of-arrival requirements for the U.S. Outer Continental Shelf appear in 33 CFR part 146.

• In the NOA *Definitions* section, § 160.202, we made five changes. First, we removed the definition for the word ''disembark'' because we no longer use that term in our NOAD regulations. Second, in part because Sec. 617 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) amended the 46 U.S.C. 2101(19) definition of ''offshore supply vessel'' after our NPRM was published, we deleted this proposed definition and five others we proposed (''commercial service,'' ''oil spill response vessel,'' ''passenger vessel,'' ''recreational vessel,'' and ''towing vessel'') that appear in 46 U.S.C. 2101. Inserting 46 U.S.C. 2101 definitions in the CFR may make it easier for CFR readers to find the definition of a term used in part 160, but as this recent legislation demonstrates, by inserting these statutory definitions, we create the potential for conflicting definitions. With the recent availability of an online official source of the U.S. Code (see *http://www.gpo.gov/fdsys/search/home.action*), access to 46 U.S.C. 2101 is not as limited as when we proposed our definition section. Our introductory text in § 160.202 pointing to 46 U.S.C. 2101, combined with a new online source for that authority, will make it easy to find the 46 U.S.C. 2101 definitions we have not separately included in § 160.202. Third, rather than use a jurisdictional term not found in 33 CFR part 2, we did not add a definition of ''Continental United States'' as proposed, but instead specified those jurisdictions in the sections in which we proposed to use that term: §§ 160.204(a)(5)(iii) and 160.212(a)(2) and (b)(2). Fourth, to address public comments, we added definitions for the following terms that we did not propose to add in the NPRM and that are not defined in 46 U.S.C. 2101: ''ferry schedule'' and ''Operating exclusively within a single Captain of the Port zone.'' For a discussion of these two definitions, see the ''Exemptions'' discussion in VI.A.3. Fifth, we added a definition of the term ''boundary waters'' that we use in a new § 160.212 paragraph on when to submit an NOA.

• In the NOA *Applicability* section, § 160.203, we specified in paragraph (a) that the referenced ports and places were those within the navigable waters of the United States or any deepwater port as defined in 33 CFR 148.5 and otherwise clarified that paragraph. For our rationale, see the ''Applicability'' discussion in VI.A.1.

• We revised the NOA *Exemptions and exceptions* section, § 160.204, to address public comments by adding to the list of exempted or excepted vessels United States- or Canadian-flag vessels engaged in certain salvage operations and certain ferries on fixed routes. We also added the requirements each such vessel must meet to qualify for the exemption or exception. In response to a suspension of reporting requirements under regulated navigation area requirements in §§ 165.830 and 165.921 until December 31, 2015, we revised exemption (a)(3), which cited to those reporting requirements, and added a temporary exemption in paragraph (a)(6). For our rationale, see ''Miscellaneous'' discussion in VI.A.14. Also, we revised the heading of this section to better reflect that paragraphs (b) and (c) identify exceptions and for clarification, we replaced ''need not'' with ''is not required to'' in those two paragraphs. And in paragraph (a)(5)(vii), we excluded ferries on fixed routes provided the ferry operator submits an accurate schedule, along with information in paragraphs (a)(5)(vii)(A)–(J), to the Captain of the Port for each port or place of destination listed in the schedule at least 24 hours in advance of the first date and time of arrival listed on the schedule and updates if the schedule or other information submitted changes. For our rationale, see ''Exemptions'' discussion in VI.A.3.

• Based on comments, in the *Information required in an NOA* section, § 160.206, we did not include the proposed entrance-to-the-port field, Table 160.206(2)(xi); crewmember passport country of issuance and passport date of expiration fields, Table 160.206(4)(v) & (vi); or the person in addition to crew passport country of issuance and passport date of expiration fields, Table 160.206(5)(v) & (vi), in this final rule. For our rationale, see the ''NOA Information'' discussion in VI.A.4. In this section, we also made non-substantive edits for clarity. Effective October 30, 2013, a Nontank Vessel Response Plans and Other Response Plan Requirements final rule (78 FR 60135, Sept. 30, 2013) added another field to § 160.206, in Table 160.206: USCG Vessel Response Plan Control Number, if applicable. We included that field in our revision of § 160.206.

• We delete the *Information required in an NOD* section, § 160.207, based on our decision not to require notices of departure. For our rationale, see the ''When to Submit an NOD'' discussion in VI.A.8. We made appropriate edits throughout the regulatory text to reflect our removal of the NOD requirement, including the removal of § 160.213.

• In the *Methods for submitting an NOA* section, § 160.210, in paragraph (a), we specify that the methods for submitting an NOA include both currently available options, and methods that may be made available on *http://www.nvmc.uscg.gov* in the future. This change ensures that current options described in this final rule will still satisfy submission method requirements even if new options are later made available on *http://www.nvmc.uscg.gov.* We clarified paragraph (b) of § 160.210 by eliminating the restricting eNOAD-application reference when identifying allowable methods for submitting NOAs. The eNOAD application provides an easy-to-use, efficient method for reporting the vessel arrival or departure information required by the Coast Guard or some other Federal agencies for vessels bound for or departing from U.S. ports. It was developed to enable an NOA or NOA update to be submitted directly to the NVMC via the Internet even while the vessel is underway, thereby avoiding the need for fax machines, scanners, and telephones. It provides a means for managing and storing recently submitted NOA data, and allows a previously submitted NOA to be updated and a partially completed NOA to be saved and submitted at a later time. These eNOAD application features make completing and submitting subsequent NOAs faster and easier, but this final rule makes clear that the Coast Guard will continue to accept other electronic methods of submission, such as emailing an XML spreadsheet to *enoad@nvmc.uscg.gov.* As discussed in VI.A.12, we amended § 160.210(a) to provide the option for a vessel operator who does not have shore-side support available to fax or phone in an NOA or an update, for a vessel in an area without internet access or when experiencing technical difficulties with an onboard computer.

• We revised the *When to submit an NOA* section, § 160.212, to adjust, in paragraph (a)(3), when NOA

submissions would be required for Canadian-flag vessels less than 300 gross tons arriving directly from Canada via boundary waters in response to provisions of the Treaty between the United States and Great Britain relating to boundary waters between the United States and Canada (Boundary Waters Treaty), 36 Stat. 2448; Treaty Series 548. (For a discussion of comments related to this treaty's provisions, see ''When to submit an NOA'' discussion in VI.A.7; also see the ''Exemptions'' discussion of this treaty in VI.A.3). Also, we inserted ''Times for submitting NOAs are as follows'' as introductory text for paragraph (a)(4) to conform with the introductory text of paragraph (b)(4).

• In response to comments on the *When to submit an NOD* section, § 160.213, we decided to eliminate our proposed NOD requirement and to remove § 160.213 . We determined that NOA submission requirements would provide sufficient information. For our rationale, see the ''When to Submit an NOD'' discussion in VI.A.8.

• In the *Vessel operating requirements* section, § 161.12, we corrected a section reference from ''§ 160.203'' to ''§ 160.202.'' We also made similar conforming amendments to reflect the redesignation of our definitions section to § 160.202 in: 33 CFR 101.105, 110.158, 110.168, 110.214, 117.1007, 151.2025, 161.12, 161.19, 165.503, 165.510, 165.753, 165.811, 165.830, 165.921, 165.1181, 165.1183, and 46 CFR 4.05–1 and 148.11. Also as a conforming amendment in a note to table 161.12(c) in § 161.12, we removed a reference to § 164.46 requirements applying to certain VTS and Vessel Movement Reporting System (VMRS) areas because our amendment to § 164.46 in this final rule expands AIS applicability beyond VTS and VMRS areas.

• In the *Applicability exception for foreign vessels* section, § 164.02, we inserted the word ''foreign'' into paragraph (a) to clarify that, except where noted, the requirements of this part do not apply to foreign vessels that meet the criteria listed in paragraphs (a)(1) and (a)(2) of that section.

• In the *Incorporation by reference* section, § 164.03, for reasons stated in the description of § 164.46(a) changes immediately below, we added IMO Safety of Navigation Circular SN.1/Circ.289, regarding ''Guidance on the Use of AIS Application-Specific Messages;'' deleted SN/Circ.236, which SN.1/Circ.289 revoked; and added National Marine Electronics Association (NMEA) Installation Standard 0400–3.10. We also updated and supplemented contact information for organizations listed in this section.

• In the *Automatic Identification System* section, § 164.46, we made the following revisions:

○ In paragraph (a), *Definitions,* we revised the definition for ''Properly installed, operational'' by adding International Maritime Organization Safety of Navigation Circular 289, deleting Circular 236, and adding the National Marine Electronics Association (NMEA) Installation Standard 0400–3.10. The IMO Maritime Safety Committee approved SN.1/Circ.289 after publication of our NPRM. This new circular revises two application specific messages denoted in IMO SN/Circ.236, revokes five others, and, adds 14 new applications. As noted below in our ''Broader Use of AIS'' discussion in VI.B.2, the applications added by SN.1/Circ.289 will broadly expand the capability and use of AIS. SN.1/Circ.289 revoked SN/Circ.236 effective January 1, 2013. Based on a comment, we added NMEA Installation Standard 0400–3.10 as an option to comply with it in lieu of SN/Circ.227 and 245 because the IMO AIS requirements and guidelines were tailored to large deep-draft seagoing vessels and may be impractical for the majority of small and shallow-draft vessels subject to this rule. An example of an impracticality created by IMO AIS requirements would be a 27-foot vessel attempting to maintain a 30-foot separation between radio antennas on board. For our response to the comment, see the ''Impracticability'' discussion in VI.B.4.

○ In response to comments, in paragraph (b), *AIS carriage,* we specified a Coast Guard type-approved AIS Class A device as the standard for meeting the carriage requirement (for our rationale, see ''AIS Class B'' discussion in VI.B.7); we redesignated paragraphs (b)(1)–(5) as (b)(1)(i)–(v) to facilitate our addition of paragraph (b)(2) that lists vessels we determined may use a Coast Guard type-approved AIS Class B device to satisfy the carriage requirement (for our rationale, see ''AIS Class B'' discussion in VI.B.7); we revised the applicability criteria for vessels carrying passengers by setting a higher general threshold than we had proposed—those carrying more than 150 passengers (instead of more than 50)—and by not adopting our proposed inclusion of vessels carrying more than 12 passengers for hire and capable of speeds in excess of 30 knots (for our rationale, see ''Applicability'' and ''Broader Use of AIS'' discussions in VI.B.1 and VI.B.2); and we supplemented the vessels-moving-certain-dangerous-cargo applicability paragraph to ensure that vessels carrying or moving propane and gasoline as cargo are also required to use AIS (for our rationale, see ''Definitions'' discussion in VI.A.2 and ''Applicability'' and ''Expanding AIS Carriage'' discussions in VI.B.1 and VI.B.3). To be consistent in our terminology, we changed ''engaged in commercial towing'' in paragraph (b)(1)(ii) that expressly covers towing vessels to ''engaged in commercial service,'' and in paragraph (b)(1)(v) we deleted the ''es'' from ''cargoes'' to match the term we point to as being defined in 33 CFR part 160 subpart C, ''certain dangerous cargo.'' We also replaced the content of the informational note to paragraph (b), which discussed AIS Class B devices, with information regarding a Coast Guard Captain of the Port's (COTP's) authority under 33 U.S.C. 1223(b)(3) and 33 CFR 160.111 to restrict the operation of a vessel if he or she determines that, by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, the restriction is justified in the interest of safety.

○ In paragraph (c), *SOLAS provisions,* we included the titles of Chapter V regulations 19.2.1.6, 19.2.3.5, and 19.2.5.1 (''Positioning System,'' ''Transmitting Heading Device,'' and ''Gyro Compass,'' respectively) to make it easier for the reader to identity the subject matter of the SOLAS regulation listed. We also removed paragraph (c)(1) because the vessels we intended to cover with it that do not engage on international voyages are covered by § 164.46(b)(1) and those that do are covered by both § 164.46(b)(1) and proposed § 164.46(c)(2), which we redesignated as (c)(1) in this final rule.

○ Within paragraph (d), *Operations*—

▪ In (d)(1), we replaced ''33 U.S.C. 2001 through 2073'' with ''33 CFR part 83,'' because 33 U.S.C. 2001–2038 have been repealed, and the inland navigation rules are now contained in 33 CFR part 83. *See* Sec. 303 of Public Law 108–293, and 75 FR 19544, April 15, 2010;

▪ In (d)(2)(i), we removed the unnecessary phrase ''should the need arise'' and restructured this paragraph regarding the ability to reinitialize AIS so that it was easier to understand;

▪ In (d)(2)(iv), we added the word ''fields'' to identify AIS data that must be accurately inputted;

▪ In (d)(2)(v), we limited the applicability of the paragraph to vessels subject to § 164.46 (b) to distinguish SOLAS based-requirements applicable to vessels subject to paragraph (c); in response to comments (see

''Impracticability'' discussion in VI.B.4), we added the words ''and at least 15 minutes prior to getting underway if the vessel is'' to limit the time AIS must be in continual operation on moored vessels; and, lastly, we condensed the discussion of AIS being turned off when continual operation would compromise safety or a security incident is imminent;

- In (d)(3), we made minor edits to more clearly distinguish safety-related AIS text messaging from AIS application-specific messaging;
- We added paragraph (d)(4) to address the emerging use of AIS ASM—and to further distinguish AIS ASM from AIS text messaging—by stating that AIS application-specific messages are permissible, but are limited to no more than one per minute and to messages consistent with international standards and registered for use in the United States or Canada; and
- In the note to paragraph (d), we inserted a reference to, and World Wide Web address for, the ''U.S. AIS Encoding Guide'' to help AIS users encode (input) consistent and accurate data; we deleted the sentence referring to external positioning systems and amended the word 'integration' to the more proper term 'interfacing'; current AIS does not require further integration for its operation. We also added the sentence ''Most application-specific messages require interfacing to an external system that is capable of their portrayal, such as equipment certified to meet Radio Technical Commission for Maritime Services (RTCM) standard 10900 series'' to provide useful information to those planning to use AIS ASM.

○ In paragraphs (e), *Watchkeeping,* and (f), *Portable AIS,* we made minor edits for clarification.

○ In response to comments, in paragraph (g), *Pilot Port,* we replaced the term ''Pilot Port'' with the more specific term ''AIS Pilot Plug;'' added ''by other than the vessel Master and crew'' to qualify the subject-to-pilotage-based applicability of this paragraph; added ''and permanently affixed (not an extension cord) and adjacent'' to clarify positioning of the AIS Pilot Plug; and inserted a reference to NEMA 5–15 as an example of a 120-volt 50/60 Hz AC power receptacle.

○ In response to comments, in paragraph (h), *Exceptions,* we increased the possible maximum duration of a deviation from 1 year to 5 years (for our rationale, see the ''Broader Use of AIS'' discussion in VI.B.2); inserted examples to supplement our description of types of vessels that may seek a deviation from AIS requirements; added vessels whose design or construction makes it impracticable to operate an AIS device (*e.g.,* a submersible); and added those vessels using an AIS Class B device that lacks a display as a possible candidate for a deviation from AIS requirements in paragraphs (d)(2)(ii) and (e).

○ We redesignated paragraph (i), *Implementation Date,* as paragraph (j), and inserted a new paragraph (i), *Prohibition.* In the new ''Implementation Date'' paragraph (j) we included those vessels identified in paragraphs (b) and (c) of § 164.46 in the group of vessels that must install AIS no later than 13 months after publication of this final rule—the NPRM had proposed 7 months after publication. For our rationale, see the ''Installation Period'' discussion in VI.B.9.

○ We added new paragraph (i), *Prohibition,* to note there is a prohibition of shore-side broadcasts from AIS Class A or B devices unless such stations are specifically licensed (*e.g.,* a marine support station) to do so by the Federal Communications Commission. Class A and B devices are mobile devices not intended for shore-side use; their reporting rate is set by speed and course changes and so they have a navigation status. Using them ashore could confuse mariners on the water, who may assume they are mobile devices on the water (*e.g.,* coming around a bend vice in warehouse ashore) and take action accordingly.

VI. Discussion of Comments and Changes

As noted above, we received 91 written submissions to our docket, and statements from 27 persons who spoke at our public meetings. In total, there were approximately 475 comments in response to our NPRM. These written submissions and summaries of our two public meetings are available in the public docket for this rulemaking, where indicated under **ADDRESSES** or use direct link *http://www.regulations.gov/#!docketDetail;D=USCG-2005-21869.*

Below, we summarize these comments and any changes we made to the regulatory text in response. We discuss the NOAD comments first, then the AIS comments, and, finally, the Regulatory Assessment comments.

A. Notice of Arrival and Departure

In the NPRM, we used 11 categories to describe our proposed revisions to NOA regulations. *See* 73 FR 76302–03, December 16, 2008. We used nine of these same categories below to discuss comments we received on the NOAD portion of the NPRM. We did not receive comments on our proposed § 160.205 to clarify who must submit an NOAD or on our proposed removal of a suspended requirement related to Customs Form 1302, so we did not use those two categories below. We have inserted five additional comment discussion categories: Need for NOAD Data and Agency Collaboration in Obtaining It, Scope and Scale, Financial Impact, Outer Continental Shelf, and Miscellaneous. Some comments raised issues in more than one of these categories, so we occasionally return to a discussion of a comment.

1. Applicability

One commenter recommended that we clarify the phrase ''port or place of the United States'' as it pertains to U.S. Outer Continental Shelf (OCS) locations. The commenter noted that the Coast Guard used the term ''port or place of the United States'' in § 160.203, which sets out the applicability of this rule, without providing a specific definition. They said that the Coast Guard declined to define this term as requested by the commenter in its August 5, 2002 submission to the docket (USCG–2002–11865–0008) for the ''Automatic Identification System; Vessel Carriage Requirement'' rulemaking that produced a final rule in 2003. The commenter seeks to clarify this term as it pertains to a location on the OCS, which can become viewed as a ''place in the United States'' when a Mobile Offshore Drilling Unit (MODU) is operating on location. The commenter notes that the Coast Guard's statement in the 2003 rule (68 FR 9537, 9538, Feb. 28, 2003) suggests that the Coast Guard may not consider a location on OCS to be a U.S. port or place.

The Coast Guard addressed Notice of Arrival issues concerning the OCS in a January 2011 final rule titled ''Notice of Arrival on the Outer Continental Shelf'' (76 FR 2254, January 13, 2011). Based on this and similar comments, however, and as discussed further below in the NOA ''Definitions'' and ''Outer Continental Shelf'' sections, VI.A.2 and VI.A.14, we have revised § 160.203 to limit the applicability of regulations in 33 CFR part 160, subpart C, to vessels bound for or departing from U.S. ports or places in the navigable waters of the United States or deepwater ports. This revision is intended to make clear that, with the exception of visits to deepwater ports, visits to ports or places in the OCS are covered by 33 CFR part 146 and are not covered by this rule.

We have placed NOA applicability and exemption provisions from both the final rule and the current CFR adjacent to each other in the following derivation and comparison table so that you may

quickly identify changes this final rule is introducing that may impact your vessel or company.

TABLE 1—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY OR EXEMPTION PARAGRAPHS IN 33 CFR PART 160

Final rule section or paragraph in 33 CFR part 160	Text	Corresponding section or paragraph currently in 33 CFR part 160	Text
§ 160.203(a)	This subpart applies to the following vessels that are bound for or departing from ports or places within the navigable waters of the United States, as defined in 33 CFR 2.36(a), which includes internal waters and the territorial seas of the United States, and any deepwater port as defined in 33 CFR 148.5: (1) U.S. vessels in commercial service, and (2) All foreign vessels.	§ 160.202(a) & (b)	(a) This subpart applies to U.S. and foreign vessels bound for or departing from ports or places in the United States. (b) This subpart does not apply to U.S. recreational vessels under 46 U.S.C. 4301 et seq., but does apply to foreign recreational vessels.
§ 160.204(a)	NO CHANGE IN TEXT FROM CURRENT CORRESPONDING CFR PARAGRAPH.	§ 160.203(a)	Except for reporting notice of hazardous conditions, the following vessels are exempt from requirements in this subpart:
(1)	A passenger or offshore supply vessel when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf.	(1)	Passenger and supply vessels when they are employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf.
(2)	An oil spill response vessel (OSRV) when engaged in actual spill response operations or during spill response exercises.	(2)	Oil Spill Recovery Vessels (OSRVs) when engaged in actual spill response operations or during spill response exercises.
(3)	After December 31, 2015, a vessel required by 33 CFR 165.830 or 165.921 to report its movements, its cargo, or the cargo in barges it is towing.	(3)	(3) Vessels operating upon the following waters: (i) Mississippi River between its sources and mile 235, Above Head of Passes; (ii) Tributaries emptying into the Mississippi River above mile 235; (iii) Atchafalaya River above its junction with the Plaquemine-Morgan City alternate waterway and the Red River; and (iv) The Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between those two points.
(4)	A United States or Canadian vessel engaged in the salving operations of any property wrecked, or rendering aid and assistance to any vessels wrecked, disabled, or in distress, in waters specified in Article II of the 1908 Treaty of Extradition, Wrecking and Salvage (35 Stat. 2035; Treaty Series 502).		NO CORRESPONDING PARAGRAPH.
(5)	The following vessels neither carrying certain dangerous cargo nor controlling another vessel carrying certain dangerous cargo.	(b)	If not carrying certain dangerous cargo or controlling another vessel carrying certain dangerous cargo, the following vessels are exempt from NOA requirements in this subpart:
(i)	A foreign vessel 300 gross tons or less not engaged in commercial service.	(1)	Vessels 300 gross tons or less, except for foreign vessels entering any port or place in the Seventh Coast Guard District as described in 33 CFR 3.35–1(b).

TABLE 1—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY OR EXEMPTION PARAGRAPHS IN 33 CFR PART 160—Continued

Final rule section or paragraph in 33 CFR part 160	Text	Corresponding section or paragraph currently in 33 CFR part 160	Text
(ii)	A vessel operating exclusively within a single Captain of the Port zone. Captain of the Port zones are defined in 33 CFR part 3.	(2)	Vessels operating exclusively within a Captain of the Port Zone.
(iii)	A U.S. towing vessel and a U.S. barge operating solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia.	(4)	Towing vessels and barges operating solely between ports or places in the continental United States.
(iv)	A public vessel	(5)	Public vessels.
(v)	Except for a tank vessel, a U.S. vessel operating solely between ports or places of the United States on the Great Lakes.	(6)	Except for tank vessels, U.S. vessels operating solely between ports or places in the United States on the Great Lakes.
(vi)	A U.S. vessel 300 gross tons or less, engaged in commercial service not coming from a foreign port or place.	(b)(1)	Vessels 300 gross tons or less, except for foreign vessels entering any port or place in the Seventh Coast Guard District as described in 33 CFR 3.35–1(b).
(vii)	Each ferry on a fixed route that is described in an accurate schedule that is submitted by the ferry operator, along with information in paragraphs (a)(5)(vii)(A)–(J) of this section, to the Captain of the Port for each port or place of destination listed in the schedule at least 24 hours in advance of the first date and time of arrival listed on the schedule. At least 24 hours before the first date and time of arrival listed on the ferry schedule, each ferry operator who submits a schedule under paragraph (a)(5)(vii) of this section must also provide the following information to the Captain of the Port for each port or place of destination listed in the schedule for the ferry, and if the schedule or the following submitted information changes, the ferry operator must submit an updated schedule at least 24 hours in advance of the first date and time of arrival listed on the new schedule, and updates on the following items whenever the submitted information is no longer accurate: (A) Name of the vessel; (B) Country of registry of the vessel; (C) Call sign of the vessel; (D) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel; (E) Name of the registered owner of the vessel; (F) Name of the operator of the vessel; (G) Name of the vessel's classification society or recognized organization, if applicable; (H) Each port or place of destination; (I) Estimated dates and times of arrivals at and departures from these ports or places; and		NO CORRESPONDING PARAGRAPH.

TABLE 1—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY OR EXEMPTION PARAGRAPHS IN 33 CFR PART 160—Continued

Final rule section or paragraph in 33 CFR part 160	Text	Corresponding section or paragraph currently in 33 CFR part 160	Text
	(J) Name and telephone number of a 24-hour point of contact.		
(6)	April 30, 2015 through December 31, 2015, vessels identified as being subject to 33 CFR 165.830 or 165.921.		NO CORRESPONDING PARAGRAPH.
§ 160.215	When a vessel is bound for a port or place of the United States under force majeure, it must comply with the requirements in this section, but not other sections of this subpart. The vessel must report the following information to the nearest Captain of the Port as soon as practicable: (a) The vessel Master's intentions; (b) Any hazardous conditions as defined in § 160.202; and (c) If the vessel is carrying certain dangerous cargo or controlling a vessel carrying certain dangerous cargo, the amount and name of each CDC carried, including cargo UN number if applicable.	(b)(3)	Vessels arriving at a port or place under force majeure.

2. Definitions

One commenter recommended that the definition of ''certain dangerous cargo'' be expanded to include vessels carrying propane and gasoline so that these vessels would have to use AIS under AIS regulations redesignated as 33 CFR 164.46(b)(1)(v).

For purposes of NOA regulations, there is a definition of certain dangerous cargo (CDC) in redesignated § 160.202, which is referenced in AIS regulation 33 CFR 164.46(b)(1)(v). The definition of CDC was revised by a separate final rule entitled ''Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes'' (75 FR 59617, September 28, 2010). We address the recommendation that vessels moving propane or gasoline as cargo be required to use AIS in the AIS portion of this final rule preamble because we amended redesignated 33 CFR 164.46(b)(1)(v) in the AIS regulations, instead of changing the NOA definition of CDC in 33 CFR part 160, which would have triggered other requirements not requested by the commenter.

One commenter who operates youth-program sailing vessels, recommended adding the following sentence to our proposed ''commercial service'' definition in § 160.202: ''A vessel in which persons on board are sharing expenses, with no paid staff and which is engaged in youth development of character and citizenship shall not be considered a commercial vessel.''

We note that our definition for ''commercial service'' mirrors the definition in 46 U.S.C. 2101 and is intended to cover a broad range of commercial activities. We did not change our definition of commercial service based on this comment because the suggested revision would unnecessarily narrow that definition.[1]

A youth vessel inspected as a sailing school vessel under 46 CFR part 169 would not be considered to be operating in commercial service, and thus would not be subject to NOA requirements. But the commenter noted that his youth-program vessels are licensed as Small Passenger Vessels under 46 CFR chapter I, subchapter T, which would be considered vessels engaged in commercial service. If these vessels are operating exclusively within a single COTP zone (*see* 33 CFR part 3 for a description of zones), they likely qualify for the exemption in § 160.204(a)(5)(ii). Also, under 33 CFR 160.214, the vessel owner may request a waiver from NOAD requirements from the local COTP. This waiver provision allows the COTP to make assessments based on factors in his or her COTP zone that are difficult to account for in a general rule.

One commenter recommended that the current definition of ''operator'' should explicitly state that, for vessels subject to SOLAS Chapter IX, the operator is the ''company'' listed on the vessel's Continuous Synopsis Record (CSR), International Safety Management (ISM) Document of Compliance, and Safety Management Certificate.

We note that the operator will not always meet the SOLAS Chapter IX definition of ''company.'' We did not propose to change the definition of ''operator'' in our NPRM and we did not change the definition based on this comment because the SOLAS Chapter IX, Reg. 1 definition of ''company'' does not limit the owner, organization, or person who has assumed responsibility for operation of the ship to the ''company'' listed on the vessel's Continuous Synopsis Record, ISM Document of Compliance, and Safety Management Certificate. The unchanged definition of ''operator,'' which appears in redesignated § 160.202, identifies the ''person including, but not limited to, an owner, a charterer, or another contractor who conducts, or is responsible for, the operation of the vessel'' as the operator.

One commenter noted that, given the availability of dynamic positioning systems, the definitions of ''port or place of departure'' and ''port or place of destination'' should be revised to capture locations where vessels transfer passengers or cargo offshore, even if the vessel is not anchored or moored.

With respect to this final rule, we do not agree that we should add the offshore transfer of passengers or cargo as a factor for either of these definitions. This final rule expands the AIS requirements to include more vessels; therefore, we are increasing our MDA of

[1] Our definition of ''commercial service'' is also very similar to CBP's definition of ''commercial vessel'' in 19 CFR 4.7b(a).

when two or more vessels may be engaged in the activities the commenter describes. Also, to the extent these offshore activities take place in U.S. navigable waters, revising these two § 160.202 definitions as suggested would create a burden for vessels engaged in lightering offshore, and we decline to impose such a requirement without obtaining comments on the suggested revision. Additionally, a separate final rule titled ''Notice of Arrival on the Outer Continental Shelf'' (76 FR 2254) was published January 13, 2011, which addressed NOA requirements for certain offshore activities.

3. Exemptions

Commenters gave various reasons why ferries should be exempted from NOAD requirements: Current CBP practices of prescreening passengers in Canada and subjecting the vessel to a customs inspection when it arrives in the United States make Coast Guard NOAD requirements redundant and unjustifiable; ferries operate on a set arrival and departure schedule, so the Coast Guard already knows when a ferry will arrive; risks associated with pre-screened international ferry passengers are significantly less than risks associated with domestic ferries; under the Western Hemisphere Travel Initiative, at the United States-Canadian border, each person must have a passport, United States passport card, or certain other limited acceptable official documents; collecting and transmitting data 60 minutes before departure would eliminate a ferry operator's ability to serve last-minute travelers; NOA requirements on ferries would impact profitability and increase labor costs to collect and enter data; ferries that operate between different COTP zones, even though the ports are nearby, would be required to submit excessive daily reports even though the government has failed to show any heightened risk for operating between two COTP zones, while another operator transiting as far or farther in a single COTP zone would not be burdened with high costs of submitting 20 NOADs per day; and NOA requirements would put ferries at a competitive disadvantage with alternate choices in travel, such as land routes.

Based on comments received, we have added an NOA reporting exemption for certain ferries. We recognize that ferries are on fixed routes and schedules that can result in multiple, predictable visits within a 24-hour period to the same U.S. port, and that, due to the nature of ferry operations, it would be impractical to subject ferries to the same NOA reporting requirements as other vessels. Therefore, in this final rule we exempt ferries, as defined in 46 U.S.C. 2101(10b), that provide certain information to COTPs. As discussed above, we have not included our proposed notice of departure requirement in this final rule.

To qualify for this exemption, the ferry operator must submit the schedule for the ferry to the COTP for each port or place of destination listed in the schedule by April 30, 2015, or at least 24 hours in advance of the first date and time of arrival listed on the schedule, in addition to other information listed in new paragraph § 160.204(a)(5)(vii), including a 24-hour contact number. This exception more closely aligns with the CBP's exception in 19 CFR 4.7b(c)(1), which does not require ferries to submit either an electronic passenger arrival manifest or an electronic crew member arrival manifest. Because we need to ensure that the Coast Guard's 41 COTPs are aware of ferries entering their zones, a blanket exemption for ferries would not satisfy our need to maintain sufficient MDA.

One commenter requested an exemption for fixed-route ferry systems and tour operators remaining within specific geographic areas less than 1 nautical mile from land, whose vessels, routes, and schedules are established, and that this exemption apply to those operations (a) that are not on international voyages, (b) that do not provide overnight accommodations, and (c) whose voyages are less than 6 hours long. The commenter noted that this last provision would benefit those operations most impacted by the NOAD/AIS requirements: Small ferry operators, harbor excursion, and nature cruise operators. Also, a commenter stated that vessels such as large fish tenders make several short duration calls in separate COTP zones, triggering back-to-back reporting and an undue amount of paperwork.

The final rule contains many exemptions that apply in all U.S. waters, but there are limits to the use of general exemptions. A given set of factors, such as those described by the first commenter, may not pose a safety or security threat in one COTP zone, but may in another. For those situations, the Coast Guard may issue a waiver under § 160.214 that allows us to make assessments at the COTP level to grant relief from NOA reporting requirements based on factors specific to a given port or COTP zone.

As noted above, since publication of the NPRM, we have added an exemption for ferries that provide certain general information to COTPs. First, if the vessels on a fixed route in a specific geographic area the commenter describes do not meet the definition of ''ferry,'' but operate exclusively within one COTP zone and do not carry CDC, the vessels would be exempt from NOA requirements under § 160.203(a)(5)(ii). Second, if such vessels are on a fixed route transiting two or more COTP zones, the COTP in each of those zones has the discretion to grant a waiver under 33 CFR 160.214. Similarly, the large fish tenders, mentioned in the second comment, that make short trips transiting more than one COTP zone may request a waiver from the COTPs responsible for those zones.

A commenter recommended that, rather than requiring an operator to submit for renewal annually, a waiver should remain in force until a material change occurs, such as a change in route or character of the navigable waterway. This remain-in-force-until-material-change approach would be similar to the EPA Vessel General Permit and the state-issued Department of Environmental Protection Stormwater Runoff Permit automated renewal precedent. This change from the proposed rule would relieve an operator of yet another administrative task, while appropriately assigning reporting responsibility.

We note that if a waiver is granted, the termination date of that waiver will be at the discretion of the COTP. Over time, factors that impact security or safety may change. Periodic review of waivers allows the COTP to determine whether continuing a waiver is consistent with current security and safety assessments and strategy. We did not make any changes from the proposed rule based on this comment.

One commenter supports NOA requirements for vessels carrying CDC, but noted that when conditions make such requirements unnecessary, the Coast Guard should provide a waiver provision.

We note that § 160.214 provides a waiver provision at the COTP's discretion if NOA requirements appear to be unnecessary. In addition, force majeure provisions in § 160.215 of this final rule contain only limited reporting requirements under certain conditions beyond the control of the ship's Master. As previously noted, a separate final rule titled ''Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes'' was published September 28, 2010. That rule is intended to relieve an unnecessary burden on industry by including more lower-risk cargoes in the CDC residue category, thereby reducing the number of notice of arrival

submissions required based on the cargo a vessel is carrying. These new CDC and CDC-residue definitions currently appear in § 160.204, which will be redesignated by this final rule as § 160.202. This section redesignation is intended to move the definitions closer to the beginning of subpart C. We made no revisions in response to this waiver-provision comment.

One commenter stated that NOA regulations should not apply to tender vessel operations for cruise ships, whether performed by ship's tender or by a local vessel hired for this purpose. The commenter stated that non-U.S.-flag cruise ships arriving at or departing from any U.S. port currently must submit an NOA, irrespective of whether the previous port of departure or entry is a U.S. or foreign port, and that these notices cover passenger and crew manifests; that because the cruise ship is already in a U.S. port, the tender vessel is neither physically arriving at, nor departing from, a foreign port; that for CBP purposes, these persons are considered to have arrived or departed upon arrival or departure of the cruise ship itself; that no persons are permitted to come ashore unless and until the CBP officers have cleared the ship, and that further clearance is unnecessary when passengers depart the ship to the shore, whether departure is facilitated by a gangway or by a tendering vessel; that these vessels would also appear to be exempt from NOA requirements because their temporary operations within a port occur exclusively within a single COTP zone; and that some tendering vessels may be exempted or may receive a waiver under the limited local area of operation, but that exemption may be too narrowly defined, because some tendering vessels may travel as far as 2 or 3 miles.

We have not established a separate NOA exemption for tender vessels, but under § 160.204(a)(5)(ii), to the extent that the operations of tender vessels are exclusively within a single COTP zone, and the vessel is not carrying CDC, the tender vessel would not need to submit an NOA. If a tender vessel is carried onboard an arriving cruise ship, then a separate NOA need not be submitted for the tender vessel but if after this arrival the tender vessel begins traveling under its own power, it would be subject to NOAD requirements unless it fits into an NOAD exemption. In situations where a local tender vessel services one or more cruise ships, as long as it operates exclusively in a single COTP zone and is not carrying CDC, the tender vessel would be exempt from NOA requirements. In response to this and other comments, we have added a definition for ''Operating exclusively within a single Captain of the Port zone'' in § 160.202 to clarify what we mean by that term.

One commenter noted that its youth program vessels would not be able to comply with NOAD requirements because these sailing vessels have no computers on board and there is no Wi-Fi (wireless Internet or network connections) available in the inlet from which the vessels sail. The commenter suggested that this problem could be settled if a waiver or exemption is granted or if its vessels were considered noncommercial.

As noted above in the ''Definitions'' discussion, VI.A.2, we did not change the definition of ''commercial vessel'' for these vessels for the reasons stated there, nor do we see a valid basis for creating an exemption for vessels in this program. However, the waiver section in subpart C, § 160.214, may be a means to deal with the situation this commenter described. The COTP may grant a waiver of some or all of the NOA requirements for a given situation if, based on the COTP's assessment, a waiver is warranted. Also, note that in response to a comment discussed below in VI.A.12, we amended § 160.210(a) to provide the option for a vessel operator who does not have shore-side support available to fax or phone in an NOA or an update, for a vessel in an area without internet access or when experiencing technical difficulties with an onboard computer.

One commenter expressed support for the proposal to maintain the exemption for U.S. commercial vessels 300 gross tons or less and not carrying CDC that transit between ports or places of the United States. This commenter stated that changing this exemption would adversely affect commerce, specifically intercoastal commerce, and, subsequently, interstate commerce.

This comment relates to § 160.204(a)(4)(vi) in the NPRM. As proposed, we narrowed the 300-gross-tons-or-less exemption in the current § 160.203(b)(1) that covers U.S. and foreign vessels. Under § 160.204(a)(5)(vi) in this final rule, a U.S. vessel 300 gross tons or less, engaged in commercial service but not carrying CDC, will be exempt from NOA requirements only if the vessel is not coming from a foreign port or place. There is no longer an NOA exception for foreign commercial vessels based on tonnage, but § 160.204(a)(5)(i) does contain an exemption for foreign vessels 300 gross tons or less not engaged in commercial service.

One commenter asked us to consider the 1908 Treaty of Extradition, Wrecking and Salvage (Salvage Treaty) (35 Stat. 2035; Treaty Series 502). This treaty states, in part, that nothing in customs, coasting, or other laws or regulations shall restrict in any manner salving operations of vessels wrecked, disabled, or in distress, or wrecking appliances ''in the waters or on the shores of the other country in that portion of the St. Lawrence River through which the International Boundary line extends, and, in Lake Ontario, Lake Erie, Lake St. Clair, Lake Huron, and Lake Superior, and in the Rivers Niagara, Detroit, St. Clair, and Ste Marie, and the Canals at Sault Ste Marie, and on the shores and in the waters of the other country along the Atlantic and Pacific Coasts within a distance of thirty miles from the International Boundary on such Coasts.'' Art. II of the Salvage Treaty. Regarding reporting, it states that vessels from either the United States or Canada employed in salving in the waters of the other shall, as soon as practicable afterwards, make full report at the nearest custom house of the country in whose waters such salving takes place. The commenter also noted that Article II of the Salvage Treaty also permits vessels from either country to conduct emergency operations in the other's territorial waters when necessary to assist a disabled vessel in distress. The commenter concluded that requiring tugs or other vessels to comply with time clearances and notices prior to and after embarking on an Article II mission would restrict salving operations, putting vessels, crews, property, and the environment at risk.

Based on this comment about the Salvage Treaty which provides reciprocal rights for United States and Canada in matters of wrecking and salvage, we have added an exemption for United States- and Canadian-flag vessels engaged in operations identified by Article II of this treaty for the waters and shores it specifies. This exemption appears in revised § 160.204(a)(4).

One commenter noted that exemptions in proposed § 160.204(a)(4)(iii) for U.S. towing vessels and U.S. barges operating solely between ports or places of the continental United States should include passenger vessels operating solely on fixed routes between ports and places of the continental United States. The commenter states that exemptions already exist for U.S. towing vessels and barges, commercial U.S. vessels less than 300 gross tons, public vessels, and vessels other than tank vessels operating on the Great Lakes.

We note that certain passenger vessels may qualify for some of the four

exemptions cited by this commenter, but reasons for those exemptions do not support creating a general exemption for all passenger vessels. First, towing vessels and barges do not carry passengers and, like other vessels, are required to comply with NOA requirements when carrying CDC. Second, before September 11, 2001, both United States- and Canadian-flag vessels that operated solely on the Great Lakes and that were not tank vessels or carrying CDC were exempt under 33 CFR 160.201(c)(8)(2001) from NOA requirements. Our current Great Lakes exception, § 160.203(b)(6), reflected in redesignated § 160.204(a)(5)(v) of this final rule, is narrower but does not exclude passenger vessels, and is consistent with the more-than 100-year-old Boundary Waters Treaty, proclaimed May 13, 1910, with specific provisions to ''continue free and open [navigation] for the purposes of commerce'' on the Great Lakes and other United States-Canadian boundary waters. Third, some passenger vessels would qualify for the exemption under § 160.204(a)(5)(vi) for U.S. commercial vessels 300 gross tons or less that are not carrying CDC or coming from a foreign port or place, and those passenger vessels greater than 300 gross tons would share size features that warrant NOA requirements. Fourth, the Coast Guard established the exemption for public vessels not carrying CDC because such vessels would be owned or operated by a government. We have not made a change from the proposed rule based on this comment.

In addition to the exemptions cited, certain passenger vessels will qualify for an exemption we have added to the final rule for ferries that provide certain general information to COTPs. Other passenger vessels seeking exemptions for operating solely on fixed routes between ports or places in the continental United States may seek a waiver under 33 CFR 160.214 from each COTP for the zones the vessel plans to transit. The operating-within-a-single-COTP-zone exception relieves a reporting burden for non-CDC vessels once they enter a COTP zone but does not interfere with each COTP having access to NOA information for vessels subject to NOA requirements that arrive in the COTP's zone.

One commenter noted that the proposed revision to NOAD regulations does not affect its vessels transporting passengers and vehicles to the island of Martha's Vineyard and Nantucket, but that it would be unjustifiable to impose NOAD on operations within lakes, bays, or sounds.

We note that the exemption for vessels not carrying CDC that operate exclusively within the same COTP zone may cover most vessels otherwise subject to NOAD regulations that operate in lakes, bays, or sounds. If a vessel is transiting more than one COTP zone, however, then under 33 CFR 160.214, the vessel Master may request a waiver from NOA requirements. As noted above, based on comments received on the NPRM, we have included an exemption for ferries that provide certain general information to the COTPs.

One commenter noted that the existing § 160.204(b)(2) and proposed § 160.204(a)(4)(ii) operating-exclusively-in-a-single-COTP-zone exception is confusing and will decrease MDA. The commenter stated that this exemption should be removed, made applicable to U.S.-flag vessels only, or limited to vessels that remain inside the territorial sea baseline or boundary line. Finally, the commenter recommended that if the exemption stays, it should be reworded to remove ''exclusively,'' and should instead read ''A vessel that transits from one port or place to another port or place within a single Captain of the Port zone. Captain of the Port zones are defined in 33 CFR part 3.'' Another commenter cited Congressional mandates in the Security and Accountability for Every Port Act of 2006 (SAFE Port Act)(Pub. L. 109–347) to support his request to exclude foreign vessels from this exemption. Another commenter stated that, regarding the exemption for operating within a single COTP zone, typically, the NOA is understood to be required for arrival at a port. The commenter noted that if a COTP zone area is 200 miles all the way out to the exclusive economic zone, a vessel does not have to submit an NOA to that place, be it at the Louisiana Offshore Oil Port (LOOP) or a port. The commenter asked if this single-COTP-zone exemption includes ''voyages to nowhere;'' for example, a ship that leaves Miami, goes offshore for 24 or 48 hours, stays within the COTP Miami zone, and comes back to Miami. The commenter also asked whether the exemption is for navigable waters only or also includes the exclusive economic zone.

In response to the commenter who finds the term confusing, we have added a definition of ''operating exclusively within a single Captain of the Port zone'' to 33 CFR 160.204 that is intended to clarify the NOAD single-COTP-zone exemption.

While a vessel's initial arrival in a COTP zone may require the submission of an NOA, when a vessel is operating exclusively within a single COTP zone, it may qualify for an exemption under § 160.204(a)(5)(ii) and thus not have to file an NOA or update for each of its transits within that COTP zone. With regard to the recommendation that this operating-in-a-single-COTP-zone exemption only apply to U.S.-flag vessels, we note that foreign-flag vessels are screened upon arrival to their first U.S. port, as are U.S. commercial vessels arriving from a foreign port or place. Therefore, the potential threat posed by a foreign vessel can be assessed and appropriate measures taken on a case-by-case basis, rather than having this exception apply only to U.S. vessels. This approach allows for efficient use of Coast Guard assets and resources and prevents the imposition of an unnecessary burden on the maritime industry.

Under regulations in 33 CFR part 160, subpart C, the COTP zone exemption covers the entire COTP zone, which may extend 200 nautical miles from shore. If the ''trip to nowhere'' is within a single COTP zone, then it would not trigger NOA requirements in part 160. Current regulations in 33 CFR part 146, however, impose separate NOA requirements for vessels calling on an offshore location. *See* specifically §§ 146.401 and 146.405. Also, in reference to the LOOP, § 150.325 identifies NOAD requirements for the owner, Master, agent, or person in charge of a tanker bound for a manned deepwater port.

One commenter noted that the exemption for passenger vessels and offshore supply vessels (OSVs)(§ 160.204(a)(1)) when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf, and for oil spill response vessels (OSRVs) (§ 160.204(a)(2)) when engaged in actual spill response operations or during spill response exercises, should not extend to foreign-flag vessels. The commenter notes that, as written, the exemption for OSRVs and OSVs may be interpreted as allowing similar foreign vessels to enter or leave U.S. ports without reporting, and that such vessels currently work ''under the radar'' of government agencies and thus create security vulnerabilities. The commenter recommended that the Coast Guard add ''U.S.'' to § 160.204(a) to indicate that exempt vessels do not include foreign-flag vessels. The commenter cautioned that if the Coast Guard left the final rule written as the proposed rule, the final rule would allow foreign-flag offshore supply vessels to come and go at will in this country, and that this would

represent a security risk to America, in direct violation of the law.

We note that under § 160.204(a), OSRVs, whether foreign flag or U.S. flag, will continue to be exempt from requirements in 33 CFR part 160, subpart C, when they are engaged in actual spill response operations or during spill response exercises, as will U.S. and foreign passenger vessels and offshore supply vessels when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf. As we have noted, however, we recently published an NOA–OCS final rule (76 FR 2254, Jan. 13, 2011) that covers notice-of-arrival requirements on the OCS and satisfies SAFE Port Act implementation requirements intended to improve maritime security through enhanced layered defenses, and for other purposes. For NOA requirements on the Outer Continental Shelf, see 33 CFR part 146. We did not make any changes from the proposed rule based on this comment.

One commenter stated that the Coast Guard should consider that individual vessel waivers by COTP will not work given the number of vessels visiting various ports at various times and having to be considered individually.

We anticipate that COTPs will be able to meet the demand created by waiver requests. We recognize that factors presented by certain vessels that will be subject to NOAD requirement for the first time under this final rule may warrant a waiver for a specific vessel within a specific COTP zone, and that COTPs may receive more waiver requests in response to this final rule. We have taken into consideration the COTP's workload under the waiver provision of § 160.214 and have reviewed blanket exemption requests extensively to determine if relief may be granted at the national level in this final rule. We have determined that allowing COTPs to grant waivers should continue to be a means we leave open to provide relief from NOAD requirements when such relief is justified in a specific situation.

One commenter focused on the OCS and requested that the Coast Guard ensure that the exemptions from NOA only apply to U.S.-flag vessels, and that this exemption should be across the board—not just for offshore supply vessels, but for OSRVs and some of the other vessels that have exemptions.

We have concluded that limiting exemptions to U.S.-flag vessels is impracticable because it would place an unnecessary burden on foreign-flag vessels, which may interfere with commerce. The NOA requirements serve a variety of purposes, including, but not limited to, maintaining MDA and scheduling inspections. Once a foreign-flag ship has been screened and appropriate activities (inspection, boarding, etc.) have been carried out, the Coast Guard has assessed, and in some cases reduced, the risk the ship may pose.

One commenter stated that, from the enforcement side, there is sometimes a difference between how arrivals and departures are reported. The commenter offered the following example: A vessel arrives in Miami and submits an NOA for Miami. While the vessel is in port, it shifts to Fort Lauderdale, which is still within the COTP Miami Zone. But for the NOD to be accurate, it would report Fort Lauderdale. The commenter asks whether this scenario creates enforcement confusion and if there is some means to address this.

We do not believe situations like this will create an issue as it pertains to enforcement. The COTP is aware of his or her geographical boundaries and the ports within those boundaries. And, as we discuss elsewhere, we have eliminated our proposed notice of departure. But if a vessel is operating in a single COTP zone and submits an NOA from a departure port within that zone that is different from their arrival port in that zone, it will not create confusion.

One commenter who reported making frequent near-port offshore transits offered his assessment that local Coast Guard concerns deal with the inability to monitor vessel traffic offshore. The commenter stated that one of the problems in the industry is the Coast Guard's inconsistent application of NOA exemptions or overriding regulations in response to security concerns.

We work to ensure consistent application of the NOA regulations throughout all U.S. ports by establishing an internal NOA enforcement policy that provides guidance to all field units. We also provide general guidance to clarify the intent or purpose of certain provisions of the NOA and to ensure it is being applied consistently throughout the Coast Guard. This information is located in the General Information portion of the ''Port State Control'' page on Homeport (*http://www.homeport.uscg.mil/*) and on the NVMC World Wide Web site (*http://www.nvmc.uscg.gov*). We have also published a notice of policy in the **Federal Register** that addresses how the definition of ''port or place of destination'' is interpreted by the Coast Guard. *See* 71 FR 62210, October 24, 2006. Please note that while we try to ensure consistency, there are port specific factors that the COTP must take in consideration when evaluating the potential risk that may be associated with a vessel arrival to his or her zone.

4. NOA Information

One commenter supported the proposed rule's added NOA requirements to submit the Maritime Mobile Service Identity (MMSI) number and to report whether the vessel is 300 gross tons or less, but recommended that the Coast Guard require the submission of information on vessel type, last and next port of call, and hull type for tankers and barges.

We do not believe that collecting vessel and hull type of tankers and barges through NOAD reporting requirements is necessary because we are able to determine vessel and hull type through other means.

Section 160.206 and Table 160.206(2)(iii) and (ix) of this final rule require reporting of the port or place of the United States a vessel will visit, as well as its last port or place of departure. Based on this comment, however, we did make a nomenclature revision, adopting defined terms for use in Table 160.206(2)(ix) by changing the proposed ''Last Port of Call'' to ''Last port or place of departure,'' and making a corresponding change in Table 160.206(2)(x).

One commenter recommended that the Coast Guard specify the Universal Location Code (ULC), developed by the Federal Industry Logistics Standardization (FILS) Committee, as the means to report the data element in proposed Table 160.206(2)(iii)(''For the port or place of the United States to be visited, list the name of the receiving facility, the port or place, the city, and the state.''). The commenter noted that this revision would allow the Coast Guard to easily cross reference information on locations collected by other agencies to improve safety and enhance security. The commenter identified a government World Wide Web site where the list of location codes would be available.

As noted, § 160.206(a) and Table 160.206(2)(iii) of this final rule, as in the proposed rule, requires the name of the receiving facility, port or place, city and state. This information is available to vessel owners and provides the necessary detail required for this final rule to meet its PWSA objectives of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways and to permit vessel traffic management. We are active participants of the Federal Initiative for Navigation Data Enhancement (FINDE)

and proponents of the FINDE ULC. Unfortunately, we are not currently able to use the ULC in our enterprise systems. Also, we would want to initiate a separate rulemaking to invite comments specifically on the use of ULCs for NOAs before imposing such a requirement. Therefore, we have not made any changes based on this comment.

One commenter stated that the new requirement for vessels to submit their estimated time of arrival to the entrance to the port (if applicable) would prove extremely helpful for vessels calling on the Lower Mississippi River.

We concur that it would be helpful for the Coast Guard to receive a vessel's estimated date and time of arrival to the entrance of the port, but because we can obtain this data through other existing means, we have decided not to include this new proposed item (2)(xi) in Table 160.206 in this final rule. This paragraph would have required the submission of the estimated date and time of arrival of when a vessel would reach, for example, the sea buoy, pilot station, or COLREGS demarcation line of a port, if applicable. The Coast Guard can use AIS data in combination with the essential, current NOA requirement in paragraph (a)(2)(iv), for a vessel to estimate the date and time of its arrival ''[f]or the port or place of the United States to be visited,'' to provide MDA on when the vessel will reach the entrance to the port.

One commenter wanted the Coast Guard to take a more aggressive stance on Certificate of Adequacy compliance regarding maritime pollution, and recommended that we use this rule to require the submission, as part of NOADs, of two IMO forms, the Advance Notice Form (ANF) discussed in MEPC.1/Circ.644, and the Waste Delivery Receipt (WDR) discussed in MEPC.1/Circ.645, to provide necessary visibility to verify COAs and help implement the International Convention for the Prevention of Pollution from Ships (MARPOL). The commenter stated that the timing differential between NOA and ANF and WDR submissions would need to be rectified.

The submission of IMO forms to verify the Certification of Adequacy to implement MARPOL, and the implementation of a mandatory mechanism for ships to request shoreside reception services and a follow-up questionnaire are outside the scope of this rulemaking. We have not made any changes from the proposed rule based on this comment.

At the March 12, 2009, public meeting on MARPOL Reception Facilities (*see* 74 FR 8807, February 26, 2009), we raised a number of challenges regarding the shoreside waste reception issue. We noted that a mandatory mechanism needs to be implemented for ships to request shoreside waste reception services and also to report whether services were provided as requested.

One commenter stated that MARPOL reception facility reporting should not be integrated into the electronic Notice of Arrival and Departure (eNOAD) program because the commenter supports the use of recently published IMO standardized Advance Notice Forms and Waste Delivery Receipt as the vehicle by which port states can collect information on the adequacy of MARPOL reception facilities in their nations. The commenter noted that integrating various information needs of these forms would be difficult to do in a clear and concise fashion, given the already complex eNOAD format. The commenter also stated that waste reception facility data, under a separate system, can be routed directly to the appropriate Coast Guard officials for review and action, and obviate the need for these officials to access the eNOAD database to retrieve reception facility information.

The Coast Guard has developed the eNOAD application, accessible via the National Vessel Movement Center's (NVMC's) World Wide Web site, to provide a vessel with the means of fulfilling the arrival and departure notification requirements of the Coast Guard and CBP online.

While we may agree with this MARPOL reception facility comment, as noted above in response to a commenter with a different view, revising the NOA rule to integrate MARPOL reception facilities into NOAD requirements, and thus eNOAD application, is beyond the scope of this rulemaking.

One commenter agreed with the Coast Guard in requiring only the last five foreign ports for domestic vessels, but the commenter stated that it is very important that foreign vessels supply the Coast Guard with the last five ports, whether domestic or foreign, because the Coast Guard needs to start looking at the total picture of the U.S. maritime domain.

We note that, as proposed in the NPRM, we have added item (2)(ix) to Table 160.206, which, under § 160.206(a), requires a vessel, domestic or foreign, to list its last port of departure. We have also converted two data fields for the last five ports or places visited to the last five foreign ports or places visited. *See* Table 160.206(2)(i) & (ii). Once the vessel has entered U.S. waters, the last-port-or-place-of-departure data generated by Table 160.206(2)(ix) will provide us with sufficient data on a vessel's travel within U.S. waters to maintain MDA.

This information is necessary for Coast Guard compliance verification examination matrixes to determine the threat a vessel poses to a U.S. port. The last-five-foreign-ports information is also needed for the Condition of Entry (COE) Program which assesses effectiveness of anti-terrorism measures in foreign ports. If effective anti-terrorism measures are not in place, then conditions of entry are imposed on vessels bound for the United States—see *e.g.,* recent COE notice (79 FR 33771, June 12, 2014). This information has also been useful to screen to determine if a vessel has visited a country impacted by the Ebola virus outbreak within its last five ports of call.

One commenter stated that the COTP in Houston needs to know that a vessel came from New Orleans, and prior to that, that it came from Mobile. The commenter noted the Coast Guard needs to be able to track a vessel moving through the Gulf of Mexico.

As mentioned above, we have added item (2)(ix) in Table 160.206, which, under § 160.206(a), requires vessels to list their last port or place of departure. So whether a vessel is coming from a foreign port or place or another U.S. port or place, the COTP in Houston in the commenter's example will have access to that information. If a COTP is interested in identifying the track of a vessel once it is in U.S. waters, there are other means and methods (*e.g.,* AIS and VTS data) at the COTP's disposal which can be used to determine this without requiring vessels to list more than their last U.S. port or place of departure.

One commenter stated that while it may be outside the scope of this rulemaking, the Coast Guard should add the following recommendation to the scope of the rulemaking. The commenter recommends that adding more data elements that combine Coast Guard reporting with additional customs reporting could eliminate an entire set of paperwork that is processed for the CBP, namely, CBP Form I–418, Passenger List—Crew List. The commenter noted that this is not the first time the commenter has made this recommendation and that, if adopted, the change would save both the private sector and government agencies a great deal of time and money. Another commenter stated that many other improvements can be made to this reporting system and repeated a past suggestion for a working group of users sitting together with the Coast Guard and the CBP to identify opportunities

for improving and streamlining the report.

We are working with the CBP to address any eNOAD application issues related to Form I–418. Regarding the form itself, the CBP has noted that Form I–418, which is used by Masters, owners, or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act, is completed upon the vessel's arrival at its first port in the United States. *See* 75 FR 1069, January 8, 2010. The CBP is looking for ways to streamline and automate that process (see the CBP supporting statement for information collection 1651–0103). We have not made a change from the proposed rule based on this comment.

We remain open to suggestions for improving the eNOAD reporting system. We have forwarded the suggestion for a working group to the responsible Coast Guard office. Our focus here, however, is on specific comments on the revisions to the CFR that we proposed in our NPRM or specific comments on how we might best revise NOAD regulations. We have made no changes from the proposed rule based on these comments.

One commenter stated that the massive amount of reporting information and duplicate reports are indicative of a system that is ''working harder and not smarter.'' The commenter presented as an example that the Coast Guard proposes NOAs that require four vessel identifiers. The commenter stated that this means that on every NOA, we are reporting the name, call sign, official number, and now the MMSI number, and that three of these are unique vessel identifiers.

In § 160.206(a) and item (1) in Table 160.206, we require submission of the vessel's name, call sign, IMO international number (or an official number if no IMO number), and, if applicable, MMSI number, because multiple vessels may carry the same name. These four NOA data elements allow us to more quickly either authenticate the vessel's reported identity or detect problems with those submitted data. In the latter case, we seek to determine if there is an error in one or more of the identifiers or if a vessel is attempting to submit false or improper identification data.

One commenter stated that Coast Guard field units are continuously telling them that they have to report all broken equipment on the NOA. The commenter asserted this is not required currently or in the revised regulations, but that there is a lack of clarity on this point. Finally, the commenter stated that whenever there is a requirement to submit a CG–2692 form (Report of Marine Accident, Injury or Death) for a casualty report, they are constantly asked why they did not report it on the NOA.

Regarding broken equipment, we work to ensure that our field units know NOA requirements, including the one for reporting broken navigation equipment on the NOA. Existing regulations do require an NOA report on the operational condition of navigation equipment required by 33 CFR 164.35, and, as we proposed, Item (6) in Table 160.206 of this final rule expands that requirement to report on the operational condition of all navigation equipment (including AIS) required in 33 CFR part 164. Moreover, in a note to Table 160.206, we specify that submitting this report in the NOA, ''indicating that navigation equipment is not operating properly[,] does not serve as notice to the District Commander, Captain of the Port, or Vessel Traffic Center, under 33 CFR 164.53,'' which has additional reporting requirements. Regarding casualties, if the marine casualty involves a hazardous condition as defined by redesignated § 160.202, the notice given to the nearest Coast Guard Sector Office or Group Office, as required by redesignated 33 CFR 160.216, will satisfy 46 CFR 4.05–1 casualty reporting requirements. Note, however, that there is a separate requirement under 46 CFR 4.05–10 that requires a written report on Form CG–2692. The NOA is not used to satisfy the redesignated § 160.216 requirements to report hazardous conditions, but in cases where the failure of a vessel's navigation equipment creates a hazardous condition, the question as to why that condition was not reported on the NOA is appropriate.

One commenter expressed problems discerning the requirements, particularly with immigration agencies and the CBP, regarding whether to use the spelling from a national passport or a U.S. Visa on our reports.

We cannot address issues that pertain to the CBP or other agency regulations that involve immigrants; for purposes of Coast Guard NOAD regulations, however, we have left it to the owner or operator to determine which document more accurately reflects the spelling of a person's name. For questions pertaining to CBP electronic passenger and crew manifest requirements, please visit the NVMC's World Wide Web site at *http://www.nvmc.uscg.gov* or call the CBP at 409–727–0285, extension 238.

One commenter who occasionally deals in lightering, particularly in other areas of the world, was not sure whether to list a lightering location as a last port, because it is not officially a terminal or a dock. The commenter expressed problems with explaining to Masters of his company's vessels how to deal with transits of U.S. and international canals, such as the Panama Canal. The commenter offered an example of whether a vessel would need to report coming through the Chesapeake and Delaware Canal on a nearby coastwise voyage.

If a vessel is engaged in lightering, then the lightering position would not be considered a port or place under 33 CFR part 160, and this not would trigger part 160 applicability unless, while lightering, the vessel anchors or moors in the navigable waters of the United States or at a deepwater port. If a vessel anchors or moors in foreign waters while it is lightering, than that lightering position would be considered a foreign port or place and must be included on vessel's NOA under § 160.206 (a) and item (2)(i) in Table 160.206, if it was one of the last five foreign ports or places visited. Regarding canals, if a vessel is only transiting through a canal, and does not anchor or moor during that transit, then it would not be considered as arriving at or departing from a port or place.

We had proposed to add new fields for crewmember passport country of issuance and passport date of expiration in Table 160.206(4)(v) & (vi), and for persons in addition to crew, passport country of issuance and passport date of expiration fields in Table 160.206(5)(v) & (vi). We have not included these new fields in our final rule because we consider this information to be a matter of record based on CBP requirements.

5. NOD Information

One commenter discussing fishing industry vessels stated that the largest issue with the proposed rule is the time it takes to get an accurate NOD list of persons sailing and to input these data into electronic format for transmittal to the Coast Guard. As further discussed in the ''When to Submit an NOD'' section below, VI.A.8, based on comments on the NPRM, we have eliminated our proposal to require NODs. We have deleted § 160.213(a); this final rule does not require NODs.

6. Electronic Submission

One commenter recommended that the Coast Guard allow continued use of the Excel Workbook format for submission of NOADs via email, which the commenter believes is more process-effective. The commenter noted that some vessels are not set up to connect directly to the Internet to make real-time submissions, and that it is more process-effective for the ship's Master to submit

updates to the NVMC directly rather than by going through a vessel agency service. The commenter stated that the format and process for submitting NOADs and updates in the Excel format has been of minimum administrative burden for their Masters and is easily supportable without requiring direct real-time Internet connectivity from the ship.

Under this final rule, and as indirectly reflected in the proposed rule, we will accept the following electronic forms: Submission through the NVMC eNOAD World Wide Web site, XML, which includes Excel Workbook format. XML spreadsheets may be submitted via email to *sans@nvmc.uscg.gov*. Based on this comment, we are revising the final rule from the proposed § 160.210 to specify that these currently available options, or other methods made available on *http://www.nvmc.uscg.gov* in the future, may be used to satisfy this requirement.

One commenter stated that many commercial fishing vessels do not have the capability to submit NOAD information electronically, and therefore the rule creates an additional administrative workload that may require hiring additional administrative personnel because the information would have to be sent by a shore-based office.

We have sought to impose the least burden possible while still meeting our regulatory objectives of obtaining information necessary to help ensure that we reach our PWSA objective of enhancing the safety and security of U.S. ports and waterways and to permit vessel traffic management. Many commercial fishing vessels would not be required to submit NOADs because they would qualify for an exemption, such as operating exclusively within a single COTP zone (§ 160.204(a)(5)(ii)) or being a U.S. vessel 300 gross tons or less, engaged in commercial service and not coming from a foreign port or place (§ 160.204(a)(5)(vi)).

Regarding fishing vessels and other vessels, we do not believe our final rule will cause additional costs based on some vessels not having the capability for electronic submission other than vessels we have already estimated costs for in the regulatory analysis (RA). CBP requires electronic submission on most, if not all, of the vessels added by our final rule. Computer and internet access costs were captured by CBP in its 2005 Electronic Transmission of Passenger and Crew Manifests for Vessels and Aircraft (aka Advance Passenger Information System or APIS) final rule (70 FR 17820, April 7, 2005) that required all commercial vessels (minus ferries) ''arriving in the United States from any place outside the United States,'' to submit arrival manifests electronically; therefore, we did not include the cost of computers or internet service for vessels affected by our rule. The Coast Guard assumed that vessel owners and operators will submit arrival information from onboard the vessel and not leverage any efficiencies from centralized fleet reporting.

We did revise the current Mississippi-River-and-tributaries exemption, but we anticipate that most of those vessels will be able to take advantage of other exemptions afforded in the final rule such as the single-COTP-zone or U.S.-vessel-300-gross-tons-or-less exemptions. The Coast Guard does not collect information specifically on vessels that transit solely on the Mississippi and its tributaries; therefore, we are unable to quantify the number of vessels that take advantage of the current exemption.

Also, in our final rule we created an exemption for certain ferries. Those on a fixed route between two or more COTP zones qualify for an exemption if they make a one-time submission as specified in § 160.204(a)(5)(vii) to qualify for the exemption, and are required to make future submissions only if their schedules or other submitted information changes. This alternative submission would not require a computer, and submission of such information has been a common industry practice since 2003 to obtain waivers from COTPs, and therefore any ferry lacking the capability for electronic submission would not incur additional costs as a result of our final rule.

One commenter noted that limiting eNOAD submissions to this World Wide Web-based program may pose problems when severe weather events cause power outages; for example, companies did not have Internet service post-Hurricane Katrina until cell phone towers were rebuilt and cable re-laid. The commenter recommended that the Coast Guard provide an alternative method to report to the NVMC.

This final rule does not limit submissions to only NVMC World Wide Web-based applications. It also allows for other electronic forms of submission such as email. But in cases where communication infrastructure is damaged and telecommunication services are not available due to natural disasters such as Katrina, the COTP may waive any or all NOA requirements within her or his COTP zone; also, a vessel may request a waiver under 33 CFR 160.214 of any or all NOAD requirements.

One commenter noted that it operates between the eastern Caribbean and the Mid-Atlantic States, and would like to alert the Coast Guard to some obstacles that might arise by requiring only electronic submissions. The commenter stated that one of its bases is St. Thomas, USVI, and on most of its vessels, the computers—if they have them on board—do not support the downloading of the notices or responses to the notices. The commenter noted that if its employees go shoreside to comply, they need to use Internet cafes that have computers and technology dating back to the 1990s. The commenter further stated that if they go to the homes of fellow captains, they have dial-up systems instead of broadband, and it takes hours to comply, so that doing away with paper notification entirely presents an obstacle.

We understand that some vessel owners may submit shoreside NOAs but the Coast Guard does not collect information on the number of vessels that utilize this method of NOA submission. For the regulatory analysis, we assumed that all NOADs will be submitted from the vessel, and not take advantage of efficiencies from centralized fleet reporting. As use of the Internet continues to become more popular including wireless Internet access via cellular/satellite networks, we anticipate greater access to faster Internet transmissions in more locations. Also, the vessel Master, owner, or agent may take advantage of XML spreadsheets—readily available on the NVMC's World Wide Web site—that can be downloaded and retained for future use to minimize the time needed to transmit NOAs.

As stated in the NPRM, mandating electronic submission of NOAs allows the Coast Guard to quickly and automatically process, validate, and screen arrival notices. *See* 73 FR 76303, December 16, 2008. As discussed in VI.A.12, however, we amended § 160.210(a) to permit phone or fax submission of an NOA or an update, in limited circumstances.

7. When To Submit an NOA

As noted in the *Exemptions* section above, one commenter reported a problem with being able to meet the requirement to submit a manifest either 96 hours or 1 hour before departure because his youth-program sailing vessels, which sometime sail to Canada from Tacoma, WA, do not have computers onboard, and there is no wireless Internet or network connections in the inlet from which these vessels sail.

Under existing Custom and Border Protection requirements in 19 CFR 4.7b and 4.64, commercial vessels [2] arriving from a foreign port or departing for a foreign port are required to submit arrival or departure manifests electronically. This Coast Guard final rule only requires NOAs, and those are to be submitted at the same times that CBP requires that arrival manifests be submitted. These youth-program sailing vessels may not meet CBP's definition of ''commercial vessel'' and thus may not trigger CBP requirement, but the Coast Guard may consider them vessels in commercial service and thus subject to 33 CFR part 160 NOAD requirements, unless they otherwise fit into an exemption.[3]

As we noted previously, under § 160.212, the time an NOA must be submitted varies based on the duration of the vessel's voyage. Under § 160.214, however, a vessel may request a waiver of NOAD requirements from the COTPs whose zones it plans to transit. This waiver provision allows the COTP to make assessments based on specific factors about the vessel or COTP zone that are difficult to reflect in a general rule without imposing unnecessary burdens.

One commenter wrote that lowering the applicability threshold for NOA reporting would not impact its fleet, which operates exclusively in the Great Lakes, but the commenter found some aspects of the current eNOAD reporting timelines to be punitive to vessels trading exclusively within the Great Lakes and St. Lawrence Seaway system. This commenter requests that the number of hours before arrival that an NOA is due, as stated in § 160.212, should be reduced to 6 hours for vessels engaged in non-ocean-going, short-haul (voyage of 24 hours or less) shipping. Also, for voyages of less than 24 hours, vessels may also have to contact local COTP.

We considered this request to relax the timelines in 33 CFR 160.212 for submitting NOAs and NOA updates for vessels in general engaged in non-ocean-going, short-haul shipping, but have determined that this information is needed from such vessels on the timelines we proposed so that the Coast Guard and other federal entities have sufficient time to screen these vessels. As proposed in the NPRM, however, we did add a provision that would allow an NOA submission 60 minutes or more before departure for U.S. vessels 300 gross tons or less, engaged in commercial service and not carrying CDC, that are coming from a foreign port or place on a voyage of less than 24 hours. *See* § 160.212(a)(3) and discussion in NPRM at 73 FR 76303, December 16, 2008. As discussed below in the *Financial Impact* section, VI.A.12, in response to another comment on the NPRM and provisions in the Boundary Waters Treaty (36 Stat. 2448; Treaty Series 548), we have revised § 160.212(a)(3) to extend its provisions to Canadian-flag vessels arriving directly from Canada, via boundary waters, to a U.S. port or place in the Great Lakes.

We note that for vessels subject to the 60-minutes-before-departure requirement, under § 160.214, a U.S. or foreign vessel may seek a waiver from the requirement for when NOA or NOA updates must be submitted. The COTP, who can evaluate the waiver request based on the circumstances of the COTP zone in which the vessel will arrive, may grant a waiver ''for any vessel or class of vessels upon finding that the vessel, route, area of operations, conditions of the voyage, or other circumstances are such that application of this subpart is unnecessary or impractical for purposes of safety, environmental protection, or national security.''

One commenter asked the Coast Guard to consider allowing vessels with a voyage of less than 24 hours to submit an NOA prior to departure. The commenter stated that this change would reduce the number of NOAs that need to be updated because data are not really known until departure. This commenter noted that current discussions of the ''Seaborne Highway'' suggest that the number of vessels with relatively short port calls and voyage times, and those operating on established schedules, is expected to increase. Finally, this commenter stated there is an inability to submit NOAs with consecutive ports (consolidated NOAs).

We acknowledge that for vessels making short voyages it would be more advantageous to the owner or operator if NOAs could be submitted as close to departure as possible. The Coast Guard and other government agencies, however, need the time specified in the final rule to analyze and act on NOA data. We also need NOAs to reflect current data.

Section 160.212(a)(3) of this final rule permits U.S. commercial vessels of 300 gross tons or less, arriving from a foreign port or place on a voyage of less than 24 hours, to submit an NOA up to 60 minutes before departure. Whether the voyage is short or long, because of the nature of their cargo, we require towing vessels moving CDC solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia to submit an NOA before departure, but at least 12 hours before arrival at the port or place of destination. *See* § 160.212(a)(2).

As for the inability to submit NOAs with consecutive ports, we note that the submission of consolidated NOAs was introduced by a temporary rule issued soon after September 11, 2001 (66 FR 50565, October 4, 2001), and was included in a 2003 final rule (68 FR 9537, February 28, 2003). Under current regulations, a vessel may submit a consolidated NOA if, while on a single voyage, it plans to stop at more than one port or place in the United States.

In the NPRM, we proposed to eliminate § 160.206(d), which specifically addresses consolidated NOAs, and to change the NOA data required by § 160.206(a) and Table 160.206(2)(iv) & (v) from information regarding each U.S. port or place to be visited to information for ''the port or place of the United States to be visited.'' We proposed this change, which is contained in this final rule, because we found that some vessels fail to submit updated crew information and cargo information after submitting the consolidated NOA. As previously noted, we have redesigned our eNOAD application to retain previously submitted information to help reduce the burden of preparing subsequent submissions.

One commenter requested that for U.S.-flag vessels operating on the Great Lakes on voyages of less than 24 hours, the Coast Guard reinstate a previous requirement that all vessels submit an NOA prior to departing the dock. The commenter notes this would avoid subsequent amendments caused by changes before departure but after an NOA is submitted. The commenter also stated that these vessels pose low security risk, and that they will be required to have a Transportation Worker Identification Credential (TWIC)

[2] There are differences in the terms and definitions CBP and the Coast Guard use regarding commercial vessels. In *19 CFR 4.7b* (a), CBP defines ''commercial vessel'' as ''any civilian vessel being used to transport persons or property for compensation or hire.'' In 33 CFR 160.202, the Coast Guard uses the 46 U.S.C. 2101 definition of ''commercial service'' (''any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel'') to identify vessels in § 160.203 that are subject to NOAD regulations.

[3] For arrival submission times, compare 19 CFR 4.7b(b)(2) with 33 CFR 160.212(a)(4); for departure submission times, compare 19 CFR 4.64 (b)(2) with 33 CFR 160.213(a). Because these youth program sailing vessels occasionally sail to and from Canada, they would not be eligible for the exception of operating within a single COTP zone under § 160.204(a)(5)(ii) for such trips because they would be leaving the COTP zone and thus not operating exclusively within it.

by April 15, 2009, and thus would not represent a security threat. In addition, this commenter recommended that vessels that fuel in Canada should be exempt from NOA requirements because there is no demonstrable need to file an NOA when simply fueling in Canada. This commenter noted that the 24-hour rule does not recognize that changes in vessel plans can require an unanticipated fueling in Canada, and that a refueling vessel would either have to check down or go to anchor to comply with the 24-hour rule if the local Coast Guard COTP does not allow it to enter sooner.

We note that under both the existing regulations (§ 160.212(a)(3)(ii)) and this final rule (§ 160.212(a)(4)(ii)), a vessel greater than 300 gross tons on a voyage of less than 96 hours could submit an NOA just before departure, provided the NOA is submitted at least 24 hours before arrival. In this final rule, we allow U.S-flag vessels 300 gross tons or less that are coming from a foreign port or place to submit an NOA 60 minutes or more prior to departure if the voyage is less than 24 hours and the vessel is not carrying CDC (*see* 33 CFR 160.212(a)(3)). As noted immediately above, the 60-minute requirement is necessary to provide the Coast Guard and other federal agencies an opportunity to screen the vessel's passengers, crew, and cargo.

Regarding updates, for vessels greater than 300 gross tons, § 160.212(b)(4)(iii) is intended to accommodate unexpected incidents and allows vessels on voyages of less than 24 hours to submit an update at least 12 hours before arriving in the port or place of destination. For U.S. vessels 300 gross tons or less, under § 160.212(b)(3), an NOA update may be submitted as late as 6 hours before arrival.

8. When To Submit an NOD

One commenter recommended that the Coast Guard remove the proposed requirement that U.S.-flag vessels operating between U.S. ports submit NODs, because this requirement would impose an excessive administrative burden on vessel operators without producing significant offsetting security benefits. The commenter stated that the proposed rule would require U.S.-flag vessels traveling from one U.S. port to another U.S. port, after completing a voyage from a foreign port, to submit NODs—as U.S.-flag vessels carrying CDC are required to—even if they have never visited a foreign port.

In response to comments, we have removed the NOD requirement. This final rule does not require NODs. We have determined that requiring an NOD for a vessel going to a U.S. port is unnecessarily redundant because the vessel would also have to submit an NOA for their next U.S. port of destination. For vessels departing for a foreign port or place, we have not retained our proposed new requirement for an NOD because we consider that information to be a matter of record based on CBP requirements for vessels departing for a foreign port of place to submit departure manifests.

One commenter noted that, in the discussion of NOAD requirements, there is no discussion of how those requirements might impact the CBP's reporting requirement for vessels operating under a cruising license, specifically, private vessels greater than 300 gross tons. The commenter also stated that, while an NOD is not required while transiting the same COTP zone, the CBP still requires reporting. The commenter further asked whether this reporting will take the place of the reporting required if the vessel changes COTP zones.

We work with the CBP to ensure consistency in reporting requirements whenever possible; there may be some differences in requirements, because our missions and those of the CBP differ. We do not believe our NOA requirements will impact CBP reporting requirements, and as we have noted, we have removed our proposed NOD requirement.

To note differences between the CBP electronic-passenger-and-crew-arrival-manifest requirements and our NOA requirements, compare 8 CFR 231.1 and 19 CFR 4.7b with 33 CFR part 160, subpart C. For the CBP electronic-passenger-and-crew-departure-manifest requirements, see 8 CFR 231.2 and 19 CFR 4.64; see also 8 CFR 231.3. For each regulation, you should ensure that you provide the information required.

9. Force Majeure

One commenter stated that with severe weather conditions, requirements for eNOA filing may negatively impact vessel safety because a vessel may be subject to financial penalty if it deviates to another port or harbor. The commenter also noted that in addition to weather conditions, vessel destinations can change frequently and on short notice because of port and dock congestion, ice conditions, and cargo availability.

We believe that our final rule properly addresses unanticipated or unforecasted severe weather conditions. Vessels that are forced to deviate to another port or harbor because of severe weather may claim Force Majeure, notify the local COTP of arrival, and provide the limited information required under § 160.215. The NOA update requirements in § 160.208 are designed to accommodate changes in arrival caused by non-weather factors, such as port and dock congestion or cargo availability. Under 33 CFR 160.204(a)(5)(vi), U.S. vessels 300 gross tons or less, engaged in commercial service, not coming from a foreign port or place, and not carrying CDC, are exempted from meeting this NOA requirement.

10. Need for NOAD Data and Agency Collaboration in Obtaining It

Many of the comments in this category were focused on the interaction of Coast Guard and CBP requirements. We present these first.

One commenter stated that the CBP and the Coast Guard should collaborate to make current software more efficient and less confusing, and to eliminate repetitive entries. The commenter noted that the same data are captured currently by the CBP, so additional reporting is burdensome and unfair because it serves no justifiable security purpose. Also, the commenter stated that the CBP uses real-time data to screen passengers when they leave Canada and when they enter the United States. Another commenter noted that there is no point in collecting and submitting the same information gathered and recorded by the CBP.

Another commenter noted that the CBP and the Coast Guard have the same security goals, and that they should improve information sharing to lessen the demand placed on vessel operators by duplicative information requests. Another commenter stated that the CBP and the Coast Guard undertake impractical and financially irresponsible, duplicative efforts, noting that all of its international ferry passengers are pre-inspected by the CBP at the Victoria, BC terminal and are then inspected on arrival at Port Angeles terminal, and that every passenger must complete the International Crossing Form (IMO 24–2). Ferry operator employees provide vehicle license plate numbers to the CBP. The commenter also notes that under this system, there would be multiple layers of security for ferries, but still only one layer of security for the land border, which represents direct competition for ferries.

Another commenter recommended that the CBP and the Coast Guard compare Form I–418 data with eNOAD submissions and then add other data fields to eliminate the need for a paper Immigration and Naturalization Service (INS, now the CBP) Form I–418 (Passenger List—Crew List). Another commenter also sought the elimination

of paper Form I–418 through programming changes to the eNOAD system to capture all necessary crew data. The second commenter noted that vessels are still required to file a paper Form I–418 with the CBP, which contains virtually the same data elements that are collected in the eNOAD, with the exception of the following three data elements in I–418:

1. Will crewmember be performing longshore work while in the U.S.? (yes/no)
2. Date crewmember joined the ship.
3. Date crewmember separated from the ship.

One commenter saw the need for the addition of a field to declare a valid International Carrier Bond, because this information would assist the CBP in tracking fines related to APIS submissions and reduce the number of intent-to-fine notices being delivered to the wrong vessel agent.

Finally, a commenter stated that the Coast Guard and other parts of the Department of Homeland Security should coordinate their information needs, and noted that the proposed reporting system would require vessel operators to capture and forward information already captured by the CBP. Also, this commenter stated that creating duplicate information taken from several sources by different authorities or processes wastes time, resources, and effort and introduces the opportunity for error.

We agree that we should collaborate with the CBP. We have taken steps to eliminate duplicate reporting requirements and have established the NVMC World Wide Web site and eNOAD application to facilitate receipt of information required by both the Coast Guard and CBP. (For more details on the NVMC World Wide Web site, see VI.A.4, NOA Information, above.) In 2013, NVMC modified the eNOAD application to include fields which capture the Form I–418 information, allowing for electronic submission of this information. We will continue to work towards not only providing a single window for reporting, but also an application that is both more user-friendly and efficient.

As we stated in the NPRM preamble, we have worked with the CBP to avoid requiring a vessel to submit the same information to our agencies separately, but our agencies do have separate missions. The information we need to better enable us to fulfill our missions, for example under 33 U.S.C. 1225—to prevent damage to structures on, in, or adjacent to the navigable waters of the United States, safe vessel traffic management, as well as protecting those navigable waters—may differ somewhat from information the CBP requires to implement the laws defining its missions. To the extent, however, that we both require the same information of vessels, we do not require separate submissions of that information to satisfy our respective regulations in 19 CFR and 33 CFR. The eNOAD application allows a vessel owner to fill out one NOA, which is disseminated to both the Coast Guard and CBP upon submittal.

This final rule requires submission of general cargo information as well as whether the vessel is carrying CDC, but the CBP requires more detailed information about the cargo. *See* 19 CFR 4.7. While the CBP has identified the eNOAD as an approved system for submitting vessel crew manifest data to the CBP (70 FR 17820, 17828, April 7, 2005, ''vessel carriers must use the eNOAD or XML transmission methods to transmit required manifest information''), in 19 CFR 4.7(b)(2) it identifies a separate means for submission of electronic cargo declaration information to the CBP: The vessel Automated Manifest System (AMS) or any electronic data interchange system approved by CBP and announced in the **Federal Register** to replace the AMS system for this purpose.

We agree that we share security goals with the CBP. As we noted above and in our NPRM (73 FR 76303, Dec. 16, 2008), however, our agencies have different missions. We have worked with the CBP to avoid requiring a vessel to submit the same information to our agencies separately. The eNOAD application allows an arriving or departing ship to satisfy both agencies' crew and passenger information requirements with a single submission to NVMC. *See* 33 CFR 160.206 and 19 CFR 4.7b.

Regarding international ferry passengers, as noted in the *Exemptions* section above, we have added an NOAD reporting exemption for certain ferries. To qualify for this exemption, the ferry operator must submit the schedule for the ferry to the COTP for each port or place of destination listed in the schedule by April 30, 2015 or at least 24 hours in advance of the first date and time of arrival listed on the schedule after § 160.204(a)(5)(vii) of this final rule becomes effective. Ferry operators seeking this exemption must also submit other information listed in new paragraph § 160.204(a)(5)(vii), including a 24-hour contact number. This exemption more closely aligns our regulations with the CBP's advance electronic passenger or crew member manifest exception for ferries in 19 CFR 4.7b(c)(1).

We are working with the CBP to address any eNOAD issues related to Form I–418, which calls for more information about passengers and crew than is required by the Coast Guard and CBP to be submitted electronically. As proposed in the NPRM, we have removed the option, formerly in § 160.206(c), of submitting Form I–418 to satisfy crew and passenger information reporting requirements. Regarding the form itself, which is used by Masters, owners, or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act, the CBP has noted that it is completed upon arrival of the vessel. *See* 75 FR 1069, January 8, 2010. The CBP is looking for ways to streamline and automate that process (see CBP supporting statement for information collection 1651–0103).

Currently, we permit multiple methods to submit an NOA. This final rule, which mandates electronic submission, will more closely align our procedures with those of the CBP, which currently receives advance electronic crew and passenger manifest information through the eNOAD application.

The request to add a field to declare a valid International Carrier Bond is beyond the scope of this Coast Guard rulemaking. We have forwarded this comment, however, to the CBP for their consideration.

One commenter noted that requirements for vessel operators to collect passenger, crew, and vessel movement information in the NOAD are duplicative and costly, and may produce misinformation.

We disagree. For reasons stated in the preamble of our NPRM, we do not view our NOA requirements as duplicative. We have removed our proposed requirement for vessels to submit an NOD.

One commenter stated that the Coast Guard's proposed changes represent an unnecessary redundancy when transiting between U.S. ports, and that this undue burden increases the potential for errors. The commenter recommended that information submitted in the NOD should be shared with the recipients of the NOA to avoid having a separate notice with the same data being input by the owner or operator, and that only one notice should be required per voyage.

We acknowledge that there is unnecessary redundancy in the submittal of both an NOA and NOD for consecutive U.S. port visits. As previously mentioned, we have

eliminated our proposed NOD requirement.

One commenter stated there is no reason why a vessel would need to report in again (*i.e.,* after submitting an initial NOA) while the vessel is equipped with and monitored by AIS, especially if the vessel is participating in a cooperative VTS system. The commenter notes that the Coast Guard would already have information on the vessel's previous whereabouts at foreign ports.

We need the information collected on the NOA to fulfill our PWSA regulatory objective of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways. Neither AIS nor VTS requirements provide the data, such as changes in passengers or crew, called for by NOA requirements. The § 160.204(a)(5)(ii) exemption for a vessel operating in a single COTP zone reduces the number of NOAs that need to be submitted while still ensuring that NOAs can be used by a COTP to find out what vessels will be entering his or her COTP zone and who will be on board those vessels.

To the extent that a single transmission is the best way to meet agency requirements, we agree with one commenter who stated that the Coast Guard and sister agencies should coordinate information needs and submission timing so that a single NOAD submission will meet the information needs of all appropriate agencies. In addition to the CBP, we have worked with other agencies that need information from ships arriving at or departing from U.S. ports or places. For example, the Saint Lawrence Seaway Development Corporation also allows the eNOAD to be used as a means of satisfying SLSDC requirements. *See* Seaway Notice No. 6–2008 (*http://www.greatlakes-seaway.com/en/pdf/navigation/notice20080311.pdf*).

As noted above, based on NPRM comments, we have eliminated our proposed NOD requirement. We note that this change in no way alters CBP's current electronic passenger departure manifest and electronic crew member departure manifest requirements. *See* 19 CFR 4.64.

One commenter noted that expansion of NOAD and AIS requirements to additional vessel populations and transit events will enhance MDA. The commenter stated that while the current eNOAD system adequately tracks vessels entering U.S. waters bound for a U.S. port or departing a U.S. port, in many cases it does not adequately track vessel movements while a given vessel transits among several U.S. ports. We agree; the expansion of NOA and AIS requirements implemented by this final rule will enhance MDA and greatly improve our ability to track vessel movements from one U.S. port or place to another.

One commenter stated that the proposed rule is not feasible, citing an example of a seafood company that has 10 vessels, 8 of which have over 100 persons sailing, most of whom are contracted on the day of sailing. Noting that these persons have already undergone background checks prior to being offered employment, the commenter questions the security benefit from the added workload this final rule will place on the fishing vessel industry and the Coast Guard.

As noted above, we have sought to impose the least burden possible while still meeting our regulatory objectives of obtaining information necessary to help ensure the safety and security of U.S. ports and waterways and to enhance vessel traffic management. A vessel large enough to have 100 persons on board may not qualify for the exemption for U.S. vessels 300 gross tons or less, engaged in commercial service not coming from a foreign port or place (§ 160.204(a)(5)(vi)), and may sail too widely to qualify for the exemption for a vessel operating exclusively in a single COTP zone (§ 160.204(a)(5)(ii)), but NOAs are intended to provide a layer of security that allows the Coast Guard and other federal agencies to act on current information about persons on vessels planning to enter U.S. waters, transiting U.S. waters, or about to arrive in a U.S. port or place. Background checks provide a layer of security, but they do not provide these real-time data that better enable us to prevent or respond to a maritime transportation security incident.

One commenter stated that DHS regulations in 8 CFR part 231 governing submission of arrival and departure manifests state that requirements for electronic submission of manifests do not apply to vessels arriving directly from Canada and that this should be formally acknowledged in this NOAD rule.

We disagree with this commenter's reading of 8 CFR part 231. Paragraph (b)(2) of 8 CFR 231.1 does contain an exception to the Form I–94 requirement for vessels ''arriving directly from Canada on a trip originating in that country,'' and 8 CFR 231.2(b)(2) contains a Form I–94 exception for vessels ''departing on a trip directly for and terminating in Canada.'' However, both of these sections point to requirements to submit manifests electronically. Section 231.1(a) points to 19 CFR 4.7b requirements for the ''electronic transmission of arrival manifests covering passengers and crew members,'' and § 231.2(a) points to 19 CFR 4.64 requirements for the ''electronic transmission of departure manifests covering passengers and crew members.''

One commenter requested that the Coast Guard reevaluate the final rule after the AIS requirements have taken effect and the Nationwide AIS (NAIS) monitoring infrastructure is in place, and then assess the continued need for NOAD requirements. The commenter notes that once AIS is fully implemented, it could obviate the need for NOAD reports and foreign crew data would continue to be provided through CBP reports.

As recommended, we will reevaluate our need for NOAD data after the AIS requirements in this final rule become effective and the development of AIS application-specific messaging that mirrors eNOAD (see ''Broader Use of AIS'' discussion in VI.B.2). Section 160.206 and paragraph 164.46(a) of this final rule reflect the different nature of information called for by the NOA and AIS requirements. To the extent that AIS can be relied on in the future to provide information that satisfies needs currently met only by NOAD data, we will consider revising NOAD regulations.

One commenter noted that some areas that CDC vessels transit have VTS or AIS coverage, or both, and stated that this coverage provides the Coast Guard with an excellent awareness of movements within the port area. The commenter writes that these systems should enable the Coast Guard to monitor the movements of these vessels within a port area without the need for frequent NOA updates and delays created by the current system. The commenter recommends that the Coast Guard use VTS and/or AIS coverage to track vessel movements in the port area instead of requiring frequent NOA submissions for vessels carrying CDC within a port.

We disagree with this recommendation. A combination of NOA, AIS, and VTS data provides a more complete picture that better enables us to meet our regulatory objectives of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways. Not only would we be unaware of passenger and crew information for these vessels, but we would not have advance notice and other essential data obtained through

NOAs to put security measures in place for vessels carrying CDC.

One commenter stated that just one or two typing errors on a crew list can be repeated multiple times in extremely short order. The commenter noted that Houston is the petrochemical capital of the Americas, and is fed by surrounding industrial ports, the majority of which are in the same COTP zone. The commenter stated that its ships bounce between these ports on a daily basis and that the port chemical trading pattern occurs between these ports like a ball in a pinball machine. The commenter noted that transits can be as long as 16 hours sea-buoy-to-sea-buoy, and as short as 4 hours, and that combined with reports for small cargo parcels, the NOA for the next port, and the NOD for the existing port, there could be as many as five reports simultaneously, with the majority of the massive amount of information required by each being virtually the same.

Based on comments on the proposed rule, we eliminated our proposed NOD requirement. If a vessel is operating in the same COTP zone and is not carrying CDC, then the single-COTP-zone exemption in § 160.204(a)(5)(ii) would apply. We expanded our definition of ''CDC residue'' in our ''Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes'' final rule (75 FR 59617, September 28, 2010). This revision, which reflects the reduced risks associated with CDC reside, allows more vessels to take advantage of the single-COTP-zone exception. For vessels carrying CDC cargo, however, the COTP must evaluate all factors associated with the cargo, vessel, crew, and the infrastructure in the port and determine if it is necessary to utilize Coast Guard resources to mitigate any potential threat that the vessel cargo may pose. Vessels carrying CDC also have the option to request a waiver from the local COTP under § 160.214.

In regards to reporting information, we are working towards eliminating the need to reenter data that are still applicable to the next NOA submitted via the eNOAD; through future software upgrades, we expect to decrease the amount of time spent on data entry with respect to both the NOA and NOD.

One commenter noted that, in the past, massive updates and reporting have resulted in industry delays and confusion at the National Vessel Movement Center and at the local Coast Guard field units because they are overwhelmed with too many reports and cannot decipher the new information. The commenter noted that these reports always result in delays to industry, and that the minimum delay costs $1,000 an hour. The commenter asks why the reports cannot be simplified, combined, and streamlined by consolidating all of the repeated information. The commenter stated that once the information has been input on the first report, there should be no reason to repeat it continuously because the vessels are screened coming into every port by Marine Information for Safety and Law Enforcement (MISLE) at the field unit and the information is already contained in the first submitted report. Finally, the commenter makes an apparent reference to the 60-minutes-before-departure NOA requirement in proposed § 160.212(a)(3) when noting that for short voyages, the Coast Guard has already considered an allowance within its regulations for vessels under 300 gross tons, but not for vessels with the aid of AIS and COP in place. The commenter noted that no vessel bounces around ports in the United States more than chemical tankers, and requested that the Coast Guard provide some type of allowance to facilitate this type of trade.

We are working proactively towards streamlining the eNOAD application and process. Many vessels that ''bounce around'' ports may qualify for an exemption because they are 300 gross tons or less or because they are operating exclusively in a single COTP-zone, but these exemptions are limited to vessels not carrying CDC. Vessels carrying CDC do not qualify for these exemptions because of the risk associated with their cargo. Also, chemical tankers departing to another COTP zone will need to submit an NOA. The infrastructure, assets, and other factors in each COTP zone may be different, creating a different level of risk for the zone. Each COTP will need to evaluate this risk and determine if there are any additional criteria or safeguards that will need to be put in place.

11. Scope and Scale

One commenter noted that the rule has direct implications for a transit ferry system for islands in Casco Bay, and would impose a significant economic and administrative burden for that industry. The commenter recommended that the Coast Guard consider the scope and scale of the rule, and not underestimate the significant economic impact or overestimate the necessity of the rule.

This final rule will not impact the Casco Bay ferry system because their vessels operate in a single COTP zone and therefore will be exempted. If Casco Bay ferry system chooses to operate in two or more COTP zones then it would need to provide the COTPs in those zones a one-time submission of their schedule and the information requested in § 160.204(a)(5)(vii) to qualify for an exemption from standard NOA reporting.

We gave considerable consideration to the proposed rule and determined it is necessary to increase MDA by extending NOAD requirements for vessels that were not previously covered under part 160, but based on comments we received on the NPRM we have made revisions. We have revised our regulatory analysis to note existing CBP requirements and to reflect changes from requirements that the Coast Guard proposed in the NPRM and those we included in this final rule.

We expect this final rule to impose minimal regulatory costs on industry as a result of our elimination of the proposed NOD requirements, the addition of several exemptions and an exception, and the addition of only three NOA information fields that are new to industry. Also, as noted above in the ''Exemptions'' preamble discussion, based on comments on the NPRM, we have added an exemption for certain ferries in § 160.204(a)(5)(vii).

12. Financial Impact

We received various comments on the financial impact of the rule. Commenters noted that companies will incur computer software, programming, and hardware costs to process and protect data called for by this rule; that the cost of this added regulatory compliance is significant; that this rule presents an economic burden to marine operators already having financial difficulties; that there are substantial costs to capturing, coding, and transmitting data required by NOAD regulations; that requirements present a negative economic impact during a bad economy and a negative impact and threat to the viability of local economies; and that NOAD data collection will add a big administrative burden to passenger vessel operators.

The Coast Guard estimated the NOAD costs of the rule based on the rule's requirements and current CBP regulations. The additional cost for U.S. vessel owners and operators is for the new NOA fields on the NOA form; only three of these fields are new to industry. See the regulatory analysis in the docket for further detail. Any vessel coming from or departing to a foreign port or place is required to submit an electronic NOAD under CBP regulations, which require the use of a computer and associated hardware and software; therefore, we did not include the cost of a computer and other associated costs

such as programming, hardware and software for the affected vessel population in this rule. Based on labor costs and the time to fill in the information for the three fields of data that are new to industry, we estimate it will cost a vessel owner or operator less than 1 dollar per trip to submit the additional arrival information. The Coast Guard attempted to reduce the financial impact of the NOA requirements on vessel owners and operators by adding exemptions and an exception based on comments from the NPRM. Additionally, the Coast Guard more closely aligned its requirements to CBP regulations in an effort to reduce the financial burden on industry and we also eliminated our proposed NOD requirement.

One commenter requested that the Coast Guard consider the cumulative financial and administrative burden for maritime operators from this final rule, which comes in addition to other costs associated with regulations for TWIC, stability, discharges, STCW, other licensing changes, security plans, etc.

We have considered the cumulative impacts associated with this final rule. Please see the AIS Cumulative Impact section of the regulatory analysis in the docket, including Table 22, Cumulative Impacts of AIS Final Rule. Executive Order 13563 underscored Executive Order 12866's directive for government agencies to tailor their regulations to impose the least burden on society by taking into account the cost of cumulative regulations. The Coast Guard and DHS are working to implement this Order.

In this final rule, we have sought to reduce the burden on industry by choosing the least-cost alternative with the use of Class B AIS devices for certain vessel classes given the statutory basis for AIS carriage, where ''no action'' is not an option. This allows us to meet our regulatory objectives of obtaining information necessary to help enhance the safety and security of United States ports and waterways and to enhance vessel traffic management. Moreover, regarding passenger vessels, in this final rule we are not adopting the threshold of 50 or more passengers we proposed in the NPRM. Instead, we are setting the threshold at vessels certificated to carry more than 150 passengers, which is similar to the current threshold of more than 150 passengers for hire. *See* 33 CFR 164.46(a)(3)(i) and (iii) (2013). Other than certain dredges, all of the vessels this final rule add to those currently required to install and use AIS (see Table 6 in the RA) are covered by 46 U.S.C. 70114(a)(1)(A) and (C) which give no discretion to the Secretary. Based on our analysis, all vessels moving certain dangerous cargo and vessels certificated to carry more than 150 passengers are already covered by the 46 U.S.C. 70114(a)(1)(A) and (C), MTSA length threshold. In the regulatory analysis in the docket for review, we estimated the costs to industry for the NOA and AIS portions of this rule. From our analysis, the NOA portion of this rule adds a present value discounted cost of about $201,619 over the 10-year period of analysis using a 7 percent discount rate for all vessel owners and operators that must comply with NOA requirements. Our final rule adds less than 1 dollar per vessel trip for owners and operators to comply with the NOA portion of this rule. For AIS, we present a cumulative impact of the 2003 MTSA AIS final rule and this final rule, in the regulatory analysis available in the docket for review.

For NOA, and in our effort to be as least burdensome as possible, the Coast Guard more closely aligned its NOA regulations with CBP regulations to make it easier to satisfy both requirements through a single submission.

One commenter disagreed with our proposal to expand the applicability of NOAD regulations and noted that this revision would be disproportionately costly to its towing vessels which operate on the Great Lakes, and to small businesses, because its tugs do not have onboard computers, Internet access, or facsimile capability, and because its offices that are capable of submitting NOAD notices electronically to the NVMC are not manned 24 hours a day, 7 days a week, 365 days per year. The commenter notes that the nature of Great Lakes shipping involves short transits between the United States and Canada, with frequent border crossings, and that any form of electronic submission disproportionately affects this population of vessels and small businesses. This commenter recommended that vessels 300 gross tons or less arriving from a foreign port should have a more cost-effective avenue of reporting, such as verbal [spoken] notification and electronic notification within 48 hours.

Based on this comment regarding vessels 300 gross tons or less, and provisions in the Boundary Waters Treaty (36 Stat. 2448; Treaty Series 548), we are extending provisions in § 160.212(a)(3) to Canadian-flag vessels arriving directly from Canada, via boundary waters, to a United States port or place on the Great Lakes. Such vessels 300 gross tons or less and on a voyage of less than 24 hours may submit an NOA as late as 60 minutes before departure from the foreign port or place.

Under the waiver section in subpart C, § 160.214, a COTP may grant a waiver of some or all of the NOA requirements for a given vessel in his or her COTP zone, if, based on the COTP's assessment, a waiver is warranted. As we stated above in response to a comment regarding a different type of vessel without a computer on board, if the COTP determines that the situation warrants it, he or she may grant a waiver. Further, the COTP may require as a condition of the waiver that, instead of NOA data being submitted to the NVMC via methods specified in § 160.210, the NOA data be conveyed to the COTP via an alternative means. We do not believe that a blanket exemption for towing vessels coming from a foreign port or places on the Great Lakes is warranted. In § 160.212(a)(3) of the final rule, we permit NOAs from certain vessels to be submitted up to 60 minutes before departure. However, to maintain sufficient MDA, we do need NOA data on vessels, persons, and cargo coming to the United States from foreign ports or places, even if the foreign port or place is a short distance away.

One commenter stated that the rule understates the initial cost of compliance because it does not account for additional crew overtime incurred by requiring vessels to wait to depart from and arrive at the United States, the cost of Internet access, computer/Internet installation, and computer training for crews. The commenter noted that the rule places a disproportionate burden on vessels 300 gross tons or less and on small businesses.

We do not believe that we underestimated the initial cost of compliance. Since the CBP's Electronic Transmission of Passenger and Crew Manifests for Vessels and Aircraft final rule (70 FR 17820, April 7, 2005) precedes our rule for NOA requirements for vessels coming from a foreign port or place, we removed the costs associated with the submittal of NOAs and the computer cost for vessels that make these transits because the CBP's final rule already requires electronic submission and subsequently estimated these costs in the cost analysis for its APIS final rule; therefore, we have revised our regulatory analysis accordingly and removed the costs associated with NOAs for vessels coming from a foreign port or place. Based on NVMC data, the Coast Guard estimates that about 2,500 foreign flag vessels 300 gross tons or less come to the United States from a foreign port; we estimate about 500 of these vessels

transit two or more COTP zones; the associated cost for these vessels is presented in the regulatory analysis. A discussion of the population appears on page 24 in the NOA cost analysis section of the regulatory analysis available in the docket for review. The Coast Guard does not collect information on whether vessel owners submit arrival information from shoreside facilities; for the purpose of our analysis and for tractability, we assume vessel owners would submit arrival information from onboard the vessel. Even with this conservative assumption, as noted previously, we expect this rule to impose minimal regulatory costs on industry as a result of our elimination of the proposed NOD requirements, the addition of several exemptions and exceptions and the addition of only three NOA information fields that are new to industry. We note that under § 160.204(a)(5)(vi) of this final rule, U.S. vessels 300 gross tons or less, engaged in commercial service not coming from a foreign port or place and not carrying CDC are exempted.

The Coast Guard views U.S. vessels operating strictly on a domestic route as posing a reduced safety and security threat and we have incorporated several exemptions to exclude vessels operating solely in the United States. See 33 CFR 160.204. Certain vessels are still required to submit a NOA, however, so that COTPs can be made aware of vessels planning to enter his or her zone, and for the Coast Guard to schedule inspections, and possibly establish safety or security zones.

One commenter asked the Coast Guard to consider the cumulative economic impact of the NOAD rule on ferry companies serving international routes. The commenter noted that, viewed in isolation, each regulatory proposal (*e.g.,* TWIC, TWIC readers, DOT passenger vessel accessibility requirements, EPA vessel discharge permits for vessel incidental discharges, EPA vessel air emission restrictions, passenger weight limitations and vessel stability revisions, and vessel speed limits for the right whale) may have some justification and its cost to vessel operators may appear to be manageable, but taken as a whole, the proposals are costly and burdensome to the international ferry operators, who are also suffering because of the downturn in international traffic across the United States-Canadian border in recent years.

For the final rule, we completed a Final Regulatory Flexibility Analysis (FRFA). The specific statutory requirements of a FRFA can be found at 5 U.S.C. 604(a). Under these statutory requirements, we did not consider the cumulative impact of our other regulations on small businesses or affected ferry operations. This final rule will impose no additional costs on ferry owners and operators. Ferries that operate on a fixed route between two or more COTPs zones and on a regular schedule will be exempt from NOAD requirements if they submit the information required under § 160.204(a)(5)(vii). This submission has been a common industry practice since 2003 to obtain waivers from COTPs; therefore, there is no additional cost associated with this provision. All vessels that transit within the same COTP that do not carry a CDC will be exempt from submitting NOADs. We acknowledge that some of our other regulations have imposed additional costs on vessel owners and operators subject to this rule, which contains revised applicability provisions. We have taken the cost associated with this rule into consideration; please see the regulatory analysis in the docket for a discussion of the impacts of this rule on industry. In this final rule, we have sought to impose the least burden possible while still meeting statutory and international mandates, as well as our regulatory objectives of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways and to enhance vessel traffic management. Therefore, in our effort to reduce costs on industry and small entities, we abandoned our proposal to reduce the threshold of more than 150 passengers for AIS carriage to a threshold of 50 or more passengers. As previously noted, other than certain dredges, all of the vessels this rule adds to those currently required to install and use AIS (see Table 6 in the RA) are covered by 46 U.S.C. 70114(a)(1)(A) & (C) which give no discretion to the Secretary. We also present a cumulative impact analysis for the 2003 AIS final rule and this final rule in Table 22 of the regulatory analysis available on the docket for review.

One commenter noted that, with 50 ships worldwide and shipping offices around the world, his or her organization does not change the operating system on its computers often and that it has to upgrade its ships and offices almost simultaneously. The commenter noted its organization does not take computer operating system upgrades lightly.

We do not anticipate that an upgrade to the computer operating system is necessary for the submission of an NOAD. In light of the CBP's APIS final rule published in 2005, in which vessels coming from a foreign port or place must submit an arrival manifest (with the exception of ferries), this rule would not require an upgrade or replacement of existing means of submitting NOAs. If a vessel operator is required to submit an NOA or an update, but the vessel is in an area without internet access, he or she would be free to radio or use other non-internet means to convey NOA information to others in his or her organization that would be able to make a submission via the internet. In situations where a vessel operator must submit an NOA or an update, for a vessel in an area without internet access or when experiencing technical difficulties with an onboard computer, and he or she has no shore-side support available, the vessel operator may fax or phone the NOA or update, to the NVMC. However, based on Coast Guard information and for the purpose of the supporting regulatory analysis, our estimates assume NOAD information received by the NVMC is through the Internet.

13. Outer Continental Shelf

We received various requests to make changes from the proposed rule with respect to vessels on, or sailing to or from, the U.S. OCS.

Because of the unique operations of vessels arriving in the OCS, we initiated a separate rulemaking, ''Notice of Arrival on the Outer Continental Shelf'' (NOA OCS) (RIN 1625–AB28), to address the statutory directive from section 109 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884). The final rule in that NOA OCS rulemaking was published January 13, 2011 (76 FR 2254). That separate rule addresses applicability, OCS NOA reporting times, as well as information submission requirements under that rule. *See* 33 CFR part 146, as amended by 79 FR 36401, June 27, 2014.

As noted above in the ''Applicability'' section, VI.A.1, we have revised § 160.203 to make it clear that visits to ports or places on the OCS other than deepwater ports will not directly trigger 33 CFR part 160, subpart C, NOAD requirements; see NOA OCS regulations in 33 CFR part 146 that point to regulations in 33 CFR part 160. For example, § 146.405 refers to information specified in 33 CFR Table 160.206. To increase awareness of 33 CFR part 146 NOA OCS requirements, we have added a note to § 160.201 referring to these requirements.

14. Miscellaneous

On January 21, 2009, we published a notice (74 FR 3534) announcing a March 5, 2010, public meeting to be held in

Washington, DC. Several commenters requested that we schedule an additional public meeting in the Pacific Northwest because west coast international transportation companies, including international ferry operators, are located there and it was impractical for small companies or Washington State Ferry officials to attend the public meeting in Washington, DC. We received an additional request to hold meetings in the Southwest, Mid-Continental/Mid-West, and the Atlantic Northeast.

As noted above, we held one public meeting in Washington, DC, and another public meeting in Seattle, WA. We believe those two opportunities for the public to submit oral comments were sufficient, particularly given the 4-month period we provided the public in which to submit written comments. Also, we made audio recordings of these two public meetings, and made the recordings available online to the public via a link in the docket to audio-digital (MP3) files. These recordings allowed those who could not attend either meeting to listen to what was said at each meeting before the end of the comment period.

One commenter recommended amending NOAD rules to allow inland vessels to submit NOAs to a single common authority—specifically to allow any barge or towing vessel that operates on the inland and intracoastal waterways above or below Mississippi River mile 235 to be classified as inland and to report to the IRVMC, rather than the NVMC. The commenter stated that NOA requirements call for information from inland vessel operators that is inapplicable to their operations and of no material value for national security. Further, the commenter stated that this information is impractical and useless as applied to inland vessels, particularly if the reporting vessel operates below mile 235 on the Lower Mississippi River or the Gulf Intracoastal Waterway and needs to report to both NVMC and IRVMC.

In our NPRM, we proposed to revise the current NOA exemption in § 160.203(a)(3) that applies to all vessels operating upon the Mississippi River between its sources and mile 235, Above Head of Passes, and certain tributaries, so that this exemption would apply only to vessels required by 33 CFR 165.830 or 165.921 to report to IRVMC. The comment period on the NPRM closed April 15, 2009, but on January 10 and 18, 2011, the Commanders of the Eighth and Ninth Coast Guard Districts, respectively, published rules that stayed IRVMC reporting requirements for barges loaded with CDC on inland rivers in the Eighth Coast Guard District and a portion of the Illinois Waterway System located in the Ninth Coast Guard District. These stays were extended and now last until December 31, 2015. *See* 76 FR 1360, January 10, 2011, 76 FR 2827, January 18, 2011, 78 FR 25, January 2, 2013, 78 FR 4788, January 23, 2013, 78 FR 60216, October 1, 2013, and 78 FR 61183, October 3, 2013.

In this final rule, where the revised exemption is redesignated as § 160.204(a)(3), after December 31, 2015, a vessel required to report under §§ 165.830 or 165.921 would not also be required under part 160 to submit NOAs to NVMC. Until December 31, 2015, temporary exemption § 160.204(a)(6) will apply to all vessels subject to §§ 165.830 or 165.921. During these stays in reporting requirements under §§ 165.830 or 165.921, Commanders of the Eighth and Ninth Coast Guard Districts will analyze future reporting needs and evaluate possible changes in CDC reporting requirements. *See* 78 FR 25, January 2, 2013, and 78 FR 4788, January 23, 2013, 78 FR 60216, October 1, 2013, and 78 FR 61183, October 3, 2013.

The IRVMC actively tracked the movement of CDC barges on inland rivers in the §§ 165.830 or 165.921 regulated navigation areas in Coast Guard Districts Eight and Nine, respectively, and analyzed data from Fleeting Area Managers. The NOA information and timing of submission of NOAs under 33 CFR part 160, which is a primary source of data for ships arriving from foreign ports or places, presents different burdens than the now-stayed IRVMC reporting requirements under §§ 165.830 or 165.921. Compare, for example, §§ 160.206 and 160.212 of this final rule with stayed reporting requirements in § 165.830(d), (e), and (f), or § 165.921(d), (e), and (f). This final rule has been written so that Commanders of Eighth and Ninth Coast Guard Districts may continue to analyze reporting needs from vessels moving CDC barges on inland rivers in their districts, without subjecting those vessels subject to § 165.830 or § 165.921 to NOAD requirements under 33 CFR part 160.

As for reporting to a single common authority, this final rule does not control where District Eight and Nine RNA regulations may require vessels subject to those regulations to report. But as for vessels operating below mile 235 on the Lower Mississippi River, on the Gulf Intracoastal Waterway, or on other waters where they are subject to 33 CFR part 160 NOAD requirements, the information we require is needed to meet our PWSA regulatory objectives of obtaining information necessary to help enhance the safety and security of U.S. ports and waterways and to enhance vessel traffic management.

One commenter suggested that the Coast Guard issue a secure, World Wide Web-based report showing vessels cleared for arrival and that it use a uniform NOAD verification process with each Coast Guard COTP's Homeland Security group's screening of NOADs submitted and cleared by the NVMC. The commenter noted that it is beneficial to know whether additional information or a vessel boarding is required by the port's Homeland Security Office well in advance of the vessel's arrival so that time management impacts to the vessel's Master and crew can be minimized and the vessel can proactively communicate any prospective delays to the terminal or refinery waiting for its arrival.

Once the NVMC receives an NOA, an email is sent to the submitter if the NOAD is not accepted. However, vessels are not ''cleared'' by the NVMC. Regarding advance notice of boarding, it is at the COTP's discretion to determine notification times if a boarding is to occur. Under authority of 33 U.S.C. 1223 and 33 CFR 160.111, a District Commander or COTP may place operational controls on a vessel when he or she—

- Has reasonable cause to believe the vessel is not in compliance with any regulation, law, or treaty;
- Determines that the vessel does not satisfy the conditions for vessel operation and cargo transfers specified in § 160.113; or
- Determines that the vessel warrants such controls in the interest of safety due to weather, visibility, sea conditions, temporary port congestion, other temporary hazardous circumstances, or the vessel's condition.

Also, under 46 U.S.C. 70110, the Secretary may establish conditions of entry for ships coming from a foreign port that she or he has found does not maintain effective antiterrorism measures, and may deny entry to vessels that do not meet these conditions. However, we do not clear vessels for arrival.

The CBP's regulation 19 CFR 4.7 references a ''Vessel Entrance or Clearance Statement,'' Customs Form 1300. Under 19 CFR 4.3, certain vessels are required to make formal entry on their arrival at a U.S. port or place. The CBP may grant clearance for a vessel to depart a U.S. port or place. *See* 19 CFR 4.60, 4.61 and 4.95; re CBP clearance related to departures, see 19 CFR 4.63 and 4.75.

One commenter noted that his company operates more than 50 chemical tankers and has a similar amount on time charter, that it operates worldwide, that its tankers can carry up to 52 separate bulk liquid cargoes on board, that its vessels go to various U.S terminals and take on specific cargoes, and that with two crews for each vessel, the company has 100 Masters and at least 100 chief mates that it has to educate on NOAD procedures. According to the commenter, the company experiences inconsistent and confusing procedures on a regular basis, particularly with regard to the way regulations are applied by Coast Guard field units. The commenter noted at a public meeting in Washington, DC that there had been comments made there to the effect that the rules are pretty clear, but that when you get down to the field unit, particularly with security concerns, the regulations in the code are not applied universally throughout the country, particularly in the Gulf of Mexico.

We are working to ensure consistent application of the NOAD regulations throughout all U.S. ports. Different responses by COTPs to NOAD data submitted for a given vessel may reflect different priorities based on different factors in COTP zones. Questions pertaining to NOAD regulations and the application of those regulations should be directed to the Office of Vessel Activities NOA Program Manager. Contact information is available on the eNOAD World Wide Web site.

One commenter stated that, despite regular NVMC upgrades, some in the industry have been forced to use third-party contractors to comply with NOA requirements. The commenter noted that this means every report is handled twice—once aboard the vessel and once by a contractor—and thus there is twice the opportunity for errors.

We note that an NOA can be submitted directly to the NVMC via the eNOAD World Wide Web application or by email. If a vessel chooses to use a third-party contractor, that is at the vessel owner's discretion, but the vessel owner retains responsibility for the accuracy of the information.

One commenter stated that when small changes are made to forms or notices, errors may go undetected because of the massive amount of information that is asked for time and time again, and be repeated on every required form. The commenter noted these errors can result in cumulative penalties. The commenter stated that his company has experienced penalties from the CBP—specifically immigration—for crew-caused typing errors, and that if the company is doing multiple crew reporting and makes one error, then submits that copied form five times, it has now subjected itself to five times the penalties because the error appears on five copies.

We cannot speak to CBP or other agency practices as they pertain to penalties resulting from typing errors. We note, however, that a requirement in § 160.208 as proposed stated that whenever events cause submitted NOA information to become inaccurate, vessels must submit an update within the times required in § 160.212. Based on this comment, however, we are revising that regulatory text to make clear that the owner, agent, Master, operator, or person in charge of the vessel must submit an update within the times required any time events cause the submitted data to become inaccurate or the submitter realizes that the data initially submitted were inaccurate. As noted previously, however, if the estimated time of arrival is the only data element that becomes inaccurate and the new estimate is less than 6 hours off from the original estimate, then the owner, agent, Master, operator, or person in charge need not submit an update. Also under § 160.208(b), such persons need not file updates to correct the vessel location or position of the vessel at the time of reporting, or to report changes to crewmembers' positions or duties on the vessel.

One commenter stated that there is currently a 6-hour window during which, if a vessel's anticipated arrival time is within plus or minus 6 hours, no update is required. However, the commenter noted, there are some new provisions in the NPRM that would require the vessel to submit an update within 12 hours, which would not be practical.

We note that the requirement for submitting an update is the same as the current requirement for a vessel whose remaining voyage is less than 24 hours, with the exception of U.S. vessels 300 gross tons or less. *See* §§ 160.208 and 160.212(b)(3). We have made no changes from the proposed rule based on this comment.

One commenter stated that there was a need for greater specificity in the regulatory language to avoid confusion when all of the provisions of the rule are put into practice, and to ensure that the Coast Guard is truly meeting the congressional intent with regards to security.

As reflected in many of the changes we made from the proposed regulatory text, including adding definitions and specifying vessels that may use AIS Class B to satisfy AIS requirements, we have taken steps to ensure that this final rule is clear and specific. Also, in the preamble, we repeatedly link NOA requirements in this final rule with PWSA statutory objectives of helping to enhance the safety and security of U.S. ports and waterways.

One commenter stated that the Coast Guard correctly exempted OSVs from NOAD requirements. The commenter noted that this reflects both the past coverage of these vessels under NOA and the many years of an exemption and practices that have shown that these vessels do not represent a significant security concern. The commenter also noted that the existing exemption reflects our recognition that these vessels make so many transits that tracking all of their arrivals and departures would create a burden on both the Coast Guard and the industry. The commenter further stated, however, that there are discussions both in Congress and internally in the Coast Guard over raising tonnage limits on OSVs, and expressed hope that the Coast Guard's definition would not lock this into a separate standard for OSVs than might eventually come out of that process.

In the NPRM we proposed adding a definition of ''offshore supply vessel,'' a term we use in exemption § 160.204(a)(1), based on the 46 U.S.C. 2101(19) definition. In 2010, that statutory definition was amended by section 617 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281). For reasons stated in the ''Summary of Changes from NPRM'' discussion, Section V, we did not create a part 160 definition of ''offshore supply vessel,'' but instead simply relied on the introductory language in the definition section, § 160.202, which adopts 46 U.S.C. 2101(19) definitions for otherwise undefined terms. This revision does not lock OSVs into a separate NOAD standard. Revisions to OSV-specific regulations based on a statutory change in OSV tonnage limits are outside the scope of this rulemaking.

Finally, while not in response to a comment, we delayed making any amendments to 33 CFR part 160 effective until April 30, 2015. We selected this date 90 days after publication to ensure that we have changes to the eNOAD application thoroughly tested and in place before the effective date.

B. Automatic Identification System

In the NPRM, we used 12 categories to describe our proposed revisions to AIS regulations. *See* 73 FR 76304–05, December 16, 2008. For this final rule, we used a different set of categories to

group and discuss comments we received on the AIS portion of the NPRM. These 11 categories are: Applicability, Broader Use of AIS, Expanding AIS Carriage, Impracticability, AIS and Nationwide AIS, Fishing Industry Concerns, AIS Class B, AIS Displays and Integration, Installation Period, AIS Pilot Plug, and Supplemental Notice of Proposed Rulemaking.

1. Applicability

Some comments received in opposition to the proposed AIS rule questioned the need for it, its benefits, and whether it should be applicable to the commenter's type of vessel (*e.g.,* sailing vessels and tenders), operation (*e.g.,* marine assistance), or operating area (*e.g.,* rivers). The Marine Transportation Security Act (MTSA) of 2002 is our enabling statute that directs which vessels will be required to install and use AIS. This statute specifies self-propelled commercial vessels of at least 65 feet overall in length and towing vessels of more than 26 feet overall in length and 600 horsepower. *See* 46 U.S.C. 70114(a)(1)(A) and (C). In addition, MTSA directs the Secretary to require AIS on vessels ''carrying more than a number of passengers for hire as determined by the Secretary'' and vessels for which the Secretary finds AIS ''is necessary for the safe navigation of the vessel.'' *See* 46 U.S.C. 70114(a)(1)(B) and (D). In this final rule we have included the following self-propelled vessels under MTSA provisions in 46 U.S.C. 70114(a)(1)(B) and (D) that do provide some discretion to the Secretary:

- Vessels (less than 65 feet in registered length) that are certificated to carry more than 150 passengers—whether or not the passengers are for hire.
- Vessels engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect the navigation of other vessels; and
- Vessels engaged in the movement of CDC or flammable or combustible liquid cargo in bulk.

Given the nature of their operation, these vessels pose a unique challenge to navigation, and we have determined that AIS is necessary for the safe navigation of these vessels.

Since 1972, a similar group of vessels has been required by the Vessel Bridge-to-Bridge Radiotelephone Act (Pub. L. 92–63) and implementing regulations to have radiotelephones while navigating. *See* 33 U.S.C. 1201–1208 and 33 CFR part 26. The primary purpose of the Radiotelephone Act is navigation safety, an objective that it shares with MTSA. Together, the Radiotelephone Act and MTSA AIS implementing regulations provide a synergy that enhances situational awareness and could mitigate the risk of collisions and other mishaps, such as a collision with a vessel carrying passengers, a vessel engaged in dredging near a commercial channel, or one moving hazardous cargo. Data from AIS provide the telephone equivalent of ''caller ID,'' which can greatly facilitate radiotelephone communication, reducing the time required to establish a joint plan for avoiding collisions.

We have placed AIS applicability provisions from both the final rule and the current CFR adjacent to each other in the following derivation and comparison table so that you may quickly identify changes this final rule is introducing that may impact your vessel or company. Further details, including costs and impacts, are provided in the regulatory analysis.

TABLE 2—AIS DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY PARAGRAPHS IN 33 CFR 164.46

Final rule paragraph in 33 CFR 164.46	Text	Corresponding paragraph currently in 33 CFR 164.46	Text
(b)(1)	AIS Class A device. The following vessels must have on board a properly installed, operational Coast Guard type-approved AIS Class A device:.	(a)	The following vessels must have a properly installed, operational, type approved AIS as of the date specified.
(i)	A self-propelled vessel of 65 feet or more in length, engaged in commercial service.	(1) & (3)(i)	(a)(1) Self-propelled vessels of 65 feet or more in length, other than passenger and fishing vessels, in commercial service and on an international voyage, not later than December 31, 2004. (a)(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, the following vessels, when navigating an area denoted in Table 161.12(c) of §161.12 of this chapter, not later than December 31, 2004: (i) Self-propelled vessels of 65 feet or more in length, other than fishing vessels and passenger vessels certificated to carry less than 151 passengers-for hire, in commercial service;
(ii)	A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial service;	(3)(ii)	Towing vessels of 26 feet or more in length and more than 600 horsepower, in commercial service.
(iii)	A vessel that is certificated to carry more than 150 passengers.	(3)(iii)	Passenger vessels certificated to carry more than 150 passengers-for-hire.

TABLE 2—AIS DERIVATION AND COMPARISON TABLE: FINAL RULE AND CORRESPONDING CURRENT APPLICABILITY PARAGRAPHS IN 33 CFR 164.46—Continued

Final rule paragraph in 33 CFR 164.46	Text	Corresponding paragraph currently in 33 CFR 164.46	Text
(iv)	A self-propelled vessel engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels.		NO CORRESPONDING PARAGRAPH.
(v)	A self-propelled vessel engaged in the movement of—(A) Certain dangerous cargo as defined in subpart C of part 160 of this chapter, or (B) Flammable or combustible liquid cargo in bulk that is listed in 46 CFR 30.25–1, Table 30.25–1.		NO CORRESPONDING PARAGRAPH.
(b)(2)	AIS Class B device. Use of a U.S. Coast Guard type-approved AIS Class B device in lieu of an AIS Class A device is permissible on the following vessels if they are not subject to pilotage by other than the vessel Master or crew:		NO CORRESPONDING PARAGRAPH.
(i)	Fishing industry vessels		NO CORRESPONDING PARAGRAPH.
(ii)	Vessels identified in paragraph (b)(1)(i) of this section that are certificated to carry less than 150 passengers, and that—(A) Do not operate in a VTS or VMRS area defined in Table 161.12(c) of § 161.12 of this chapter, and (B) Do not operate at speeds in excess of 14 knots; and		NO CORRESPONDING PARAGRAPH.
(iii)	Vessels identified in paragraph (b)(1)(iv) of this section engaged in dredging operations		NO CORRESPONDING PARAGRAPH.
(c)	SOLAS provisions. The following self-propelled vessels must comply with International Convention for Safety of Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6 (Positioning System), 19.2.4 (AIS Class A), and 19.2.3.5 (Transmitting Heading Device) or 19.2.5.1 (Gyro Compass) as applicable (Incorporated by reference, see § 164.03):	(2)	Notwithstanding paragraph (a)(1) of this section, the following, self-propelled vessels, that are on an international voyage must also comply with SOLAS, as amended, Chapter V, regulation 19.2.1.6, 19.2.4, and 19.2.3.5 or 19.2.5.1 as appropriate (Incorporated by reference, see § 164.03):
(1)	A vessel of 300 gross tonnage or more, on an international voyage	(2)(ii)–(iv)	(ii) Tankers, regardless of tonnage, not later than the first safety survey for safety equipment on or after July 1, 2003; (iii) Vessels, other than passenger vessels or tankers, of 50,000 gross tonnage or more, not later than July 1, 2004; and (iv) Vessels, other than passenger vessels or tankers, of 300 gross tonnage or more but less than 50,000 gross tonnage, not later than the first safety survey for safety equipment on or after July 1, 2004, but no later than December 31, 2004.
(2)	A vessel of 150 gross tonnage or more, when carrying more than 12 passengers on an international voyage	(2)(i)	Passenger vessels, of 150 gross tonnage or more, not later than July 1, 2003.

2. Broader Use of AIS

We recognize that AIS will not overcome all challenges to maritime transportation safety or prevent all transportation security incidents. It is, however, the most effective tool currently available to enhance a mariner's situational awareness and our own MDA. When using AIS, pertinent real-time, digital navigation information can be autonomously and continuously exchanged between AIS-equipped vessels. AIS not only provides a position (in a manner similar to radar), but it also provides vessel data (*e.g.,* dimensions, type, call-sign, destination, ETA, navigation status) that are difficult, if not impossible, to ascertain visually and that would be burdensome, cumbersome, and distracting to exchange via voice communications. Additionally, AIS is currently the only effective means of providing real-time electronic navigation chart information from shore to ship via the broader use of AIS Application Specific Messaging (ASM), the ''smart phone'' applications for AIS. These applications use a common message type which can be processed by most AIS stations. However, embedded within the message are specific navigation- and safety-related data that are not available via other AIS messages or other existing marine safety information systems (Notice to Mariners, NAVTEX for delivery of navigational and meteorological warnings and forecasts, etc.). These messages can provide a more dynamic detail to information that is traditionally conveyed by slower means: chart updates, (*e.g.,* new navigation hazards), printed notices to mariners, navigation publications and directives, meteorological and hydrographic Web sites, and more. Because this information, like all AIS data, is digital, it can easily be decoded and portrayed on multiple navigation devices, such as electronic charts, radar, and multi-function displays. In the near future, we expect to design and develop ASM to augment or replace some other types of reporting, including potentially eNOAD, IRVMC, and right whale sightings.

In 2010, in Safety of Navigation Circular 289, the IMO adopted a compendium of ASM that promises to greatly enhance AIS utility and navigation safety. These ASM applications will provide: exchange, reporting, and broadcast of environmental, meteorological, and hydrological data, as is currently being done on the St. Lawrence Seaway, Tampa Bay, and VTS Sault Ste. Marie, and is envisioned for more waterways; data on dangerous cargo and/or persons on board; port clearance and berthing information; data on mandatory and recommended routes; extended vessel static and voyage related data; VTS broadcast of targets representing vessels with or without AIS but beyond the range (*e.g.,* around a bend) of other AIS vessels; and pertinent time-critical dynamic navigation information concerning a specified geographic area, polygon or position.

We are working closely and diligently with the Committee on the Maritime Transportation System (CMTS) (see e-Navigation Integrated Action Team at *http://www.cmts.gov/Activities/ActionTeams.aspx*) and other Federal agencies, such as the National Oceanic and Atmospheric Administration and U.S. Army Corps of Engineers, to expand the development and ensure the consistency of ASM throughout the United States. Accordingly, we have added to this final rule a new provision in § 164.46(d)(4) to ensure that in the United States, only the use of ''applications adopted by the International Maritime Organization (such as, IMO SN.1/Circ.289) or those denoted in the International Association of Marine Aids to Navigation and Lighthouse Authorities' (IALA) ASM Collection for use in the United States or Canada'' is permissible. Moreover, § 164.46(d)(4) notes that an individual application transmission is limited to no more than one every minute.

Some commenters lauded these benefits and the benefits of AIS in general, and requested we extend AIS applicability to other vessels (*e.g.,* all vessels that interact with seagoing vessel traffic). While we strongly encourage the use of AIS, we recognize that not all vessels can achieve the full benefit of AIS because of their unique nature (*e.g.,* submarines) or mode of operations (*e.g.,* fleeting area). To accommodate these situations, we provide a means for individual operators to request a deviation from AIS carriage requirements in 33 CFR 164.46(h). In response to comments, we have extended this provision to include vessels whose design (*e.g.,* submarines or vessels with an open or exposed cabin), construction, or outfitting (*e.g.,* a vessel without electrical power) makes it impracticable to operate an AIS. *See* 33 CFR 164.46(h)(4). Further, to alleviate the administrative burden on industry and the Coast Guard, and at the same time recognize that situations may change in the future, we have extended the allowable deviation period from 1 to 5 years. *See* § 164.46(h).

Numerous commenters questioned adopting the threshold of 50-or-more passengers for requiring AIS. One commenter stated that the Coast Guard has not justified the requirement for passenger vessels with the capacities of between 50 and 150 passengers to carry AIS and that such a requirement would not diminish the potential threats to the U.S. marine transportation system that the Coast Guard described. We believe requiring AIS on vessels certificated to carry more than 50 passengers would help diminish threats to the U.S. maritime transportation system, but based on our analysis of the cost and the lack of benefits of such a requirement, we have abandoned the lower threshold we proposed.

We did describe a number of maritime-related terrorist events in the NPRM (see 73 FR 76296, December 16, 2008), but we did not claim that AIS alone would prevent those or future incidents. We stated that these incidents called attention to the vulnerability of the United States to potential terrorist attacks, and that U.S. waterways and ports present both vulnerable and attractive targets. See 73 FR 76297. All vessels that carry passengers are potential terrorist targets and may also provide a means of transportation for terrorists; particularly because passengers may board the vessel without having to go through thorough background checks required of some crewmembers.

AIS is the only digital source of data the Coast Guard and other federal agencies have to gain a comprehensive real-time understanding of activities in our maritime domain, with the tools currently available on most vessels (*i.e.,* radar or ECS), which thus improves our ability to prevent and respond to transportation security and safety incidents. For example, if we learn that passenger vessels have been targeted or that one is involved in a distress situation, we are more readily able to locate the specific position and course of these vessels and mitigate the consequences of an incident, and, are also more readily able to share that information with others.

The commenter specifically noted that when promulgating current AIS regulations in 2003, the Coast Guard determined that passenger vessels carrying 150 or fewer passengers do not pose a significant risk of a transportation security incident and therefore did not require such vessels to develop Coast Guard-approved vessel security plans, and that nothing in the NOAD AIS NPRM has changed the conclusion of very low security risk in the National Risk Assessment Tool (N–RAT) published in the 2003 Implementation of National Maritime

Security Initiatives temporary interim rule. *See* 68 FR 39246, July 1, 2003. Based on that N–RAT analysis, however, we did not conclude that vessels carrying less than 150 passengers were risk free. As we previously stated; however, based on public comments and to reduce costs on industry and small entities, we have set the passenger threshold for AIS carriage in this final rule to those vessels certificated to carry more than 150 passengers.

The commenter also noted that in a Transportation Worker Identification Credential (TWIC)—Reader Requirements advance NPRM (74 FR 13360, March 27, 2009) the Coast Guard identified vessels that carry less than 500 passengers as being in the lowest risk category. In that ANPRM, which focused on identification for mariners, we did note, however, the potential for such vessels to be involved in a transportation security incident. See 74 FR 13366. A transportation security incident means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

The commenter also questions the need for AIS for navigation safety for vessels between 50 and 150 passengers and notes that of the injuries, deaths, and barrels of oil spilled the Coast Guard noted that might have been prevented by the use of AIS, that there is no apportionments as to vessel service and that the preponderance of waterways associated with these casualties are not typically used by passenger vessels generally and those carrying 50 to 150 passengers specifically. Given this, and the commenter's own experience, the commenter concluded that the contribution by passenger vessels to those accident and casualty totals is negligible or non-existent. Finally, the commenter quotes from a Coast Guard report on passenger safety on vessels under 1000 gross tons based on 1992–2003 data and notes the report states that 81.2 percent of casualties were not related to the operation of a vessel, and that fatalities were rare and when grouped by type of accident, there were no trends or patterns.

As previously noted, in this final rule we are not adopting the threshold of 50 or more passengers we proposed in the NPRM. We have adopted a threshold of more than 150 passengers in § 164.46(b)(1)(iii) of this final rule that is similar to our current passenger-for-hire threshold, but we did not retain the ''for-hire'' qualifier. We found no passenger vessels outside of VTS areas affected by the AIS portion of this final rule that are less than 65 feet in length and carry more than 150 passengers. All passenger vessels we found to be affected by this final rule are included in the 65-feet-or-more category. This approach, which is based on authority in 46 U.S.C. 70114(a)(1)(B) & (D) and covers vessels certificated to carry more than 150 passenger—whether for-hire or not, is similar to that taken in SOLAS which does not use ''for-hire'' when establishing a passenger vessel threshold.

SOLAS Regulation V.19.2.4 requires AIS on all passenger ships regardless of size or type of voyage. Under SOLAS any vessel carrying more than 12 passengers is a ''passenger ship.'' *See* SOLAS Regulation I.1(f). This AIS SOLAS provision reflects the objective of SOLAS which is to promote the safety of life at sea. We have exercised tonnage-threshold discretion under SOLAS to enable us to set our MTSA-based passenger threshold at more than 150.

As proposed, we eliminated the distinction of ''for hire'' from the types of vessels that are required to have AIS because we believe the safety benefits of AIS should extend beyond vessels carrying passengers for hire that are, nonetheless, under the MTSA threshold of 65 feet in length. In doing so, we ensure that this provision of the final rule will cover all small passenger vessels and ferries in commercial service that are certificated to carry more than 150 passengers.

Some commenters requested that we exempt certain waterways, as we are authorized to do under MTSA. *See* 46 U.S.C. 70114(a)(2)(B). While we agree that there might be waterways where the full benefit of AIS may not be realized—*e.g.,* only one vessel using AIS on that waterway, we do not favor a patchwork-of-waterways approach because situations for a given waterway may change. Because AIS is designed to provide an effective means for multiple users to exchange vessel navigation information, independent of the waterway where it is used, its benefit is proportional to the number of users and not necessarily the area of use. Therefore, rather than exempt specific waterways where there might be a small number of users, we have specified an exception in § 164.46(h)(3) for vessels that are not likely to encounter other AIS-equipped vessels. AIS can also provide valuable information in certain waterways even where there is a likelihood of encountering only one other vessel with AIS—for example, rounding a bend and other situations where other sensors, such as radar, may not detect the other vessel as soon.

One commenter stated that we failed to provide support for our assertion in our NPRM that passenger vessels added by the 50-passenger threshold would not be uniquely impacted. The commenter stated that nearly all passenger vessels of less than 65 feet that carry 50 to 150 passengers are operated by small businesses and that this segment of the U.S. maritime industry is in fact uniquely impacted. As previously noted, we have abandoned our proposal to reduce the threshold of more than 150 passengers for AIS carriage to 50 or more passengers. In 2003, as part of our initial effort to obtain information before issuing an NPRM to expand AIS applicability beyond what was included in our temporary interim rule, we solicited responses to questions. *See* 68 FR 39369, July 1, 2003. In the preamble of the final rule we published that year, we specifically mentioned reopening the comment period on questions we presented in that initial effort as well an additional question regarding expanding AIS carriage to small passenger vessels. See 68 FR 60562, October 22, 2003. In an October 2003 notice, we then asked for reasons why passenger vessels 65 feet or more in length that carry less than 151 passengers (and fishing vessels 65 feet or more in length) should be treated differently than other commercial vessels. See 68 FR 61819, October 30, 2003. After reviewing comments received in response to the questions we published in 2003 and the NPRM, we have found that many of these vessels may be owned by small entities that do not operate year around or in areas that are likely to encounter other AIS users (*e.g.,* excursion vessels in Lake Tahoe). The vessels certificated to carry less than 150 passenger impacted by § 164.46(b)(1)(i) of this final rule, are impacted in a manner that is different than the other 5,560 U.S.-flag vessels that we estimate will be affected by the AIS portion of this final rule. Because these passenger vessels are greater than 65 feet in length, 46 U.S.C. 70114(a)(1)(A) dictates that they be equipped with and operate AIS. To reduce the cost of this requirement, however, in § 164.46(b)(2)(ii) we permit the use of AIS Class B devices on vessels certificated to carry less than 150 passengers if they do not operate in a VTS or VMRS area and do not operate at speeds in excess of 14 knots. Regarding our separate requirement in § 164.46(b)(1)(iii) for vessels certificated to carry more than 150 passengers, we decided to maintain the existing

threshold of more than 150 passengers, rather than decrease it to the threshold of more than 50 passengers we proposed, but we did expand the threshold to include any passenger, not solely passengers for hire, and, as with our other AIS requirements, we expanded the threshold to all navigable waters. While the Coast Guard believes that AIS can be of great benefit to all vessels, particularly those carrying passengers, we recognize that the majority of these vessels that carry less than 150 passengers (whether for hire or not) would probably request a deviation of this final rule because they would meet one of more of the exception criteria denoted in 33 CFR 164.46(h), because they either operate solely within a confined area, are on short fixed-schedule voyages, or are not likely to encounter other AIS-equipped vessels. Thus, to mitigate both the burden to industry of requesting deviations and to the Coast Guard of adjudicating a large number of requests, we have adopted a threshold of more than 150 passengers for all passenger vessels, including high-speed passenger vessels. As noted above, we did not include our separate 12-passenger threshold for vessels capable of speeds in excess of 30 knots–see § 164.46(b)(4) in the NPRM—in this final rule.

3. Expanding AIS Carriage

As noted above, we received comments asking us to expand AIS carriage beyond the population in our proposal. Below, we address the requests to expand AIS requirements to offshore platforms.

The primary benefit of AIS is to provide near real-time dynamic information (*i.e.,* position, course, and speed); therefore, we do not see the need for all fixed charted structures such as offshore platforms to have AIS for the safe navigation of the vessel. We do believe, however, that certain fixed structures, based on their position and proximity to shipping lanes or safety fairways, are sometimes relied upon as if they were aids to navigation, and thus could benefit from AIS Aids to Navigation (AIS AtoN) and could enhance MDA and navigation safety. An AIS AtoN provides position, name, and health status of the aid, such as whether or not the aid is on station and watching properly.

Given the advent of AIS AtoN and the benefit that these stations may provide to the shipboard users required to have AIS under this final rule, we have amended 33 CFR 62.52, 66.01–1, and 66.01–5(i) to recognize and allow the use of AIS AtoN stations or other electronic private aids to navigation. Those seeking to deploy an electronic private AtoN are required to go through the application and approval process set forth in 33 CFR part 66 for private aids to navigation.

As for requiring AIS on other vessels beyond what we proposed in the NPRM, we extended applicability to self-propelled vessels engaged in the movement of flammable or combustible liquid cargo in bulk, so we would be sure to include vessels moving gasoline or propane as cargo. As we previously stated, we encourage all commercial vessels to equip themselves with AIS. However, this final rule requires AIS only on those vessels for which we have authority to require carriage of AIS; that is, for those vessels specifically identified in MTSA, and other vessels including passenger vessels, that we have determined require AIS for the safe navigation of the vessel.

4. Impracticability

We received various comments on the impracticability and safety risk of certain AIS provisions in our proposed rule. One such example was our requirement to maintain AIS in operation at all times while a vessel is moored, which would require having the vessel's power plant running to operate AIS when nobody is on board—a practice that we did not intend to promote by this rule. In response to this comment, we amended § 164.46(d)(2)(v) to require AIS to be in operation only at least 15 minutes prior to getting underway. Similarly, others commented on the impracticability of having AIS because their vessels lacked an adequate power supply (*e.g.,* floating plants) or because the vessel's design made AIS use impracticable (*e.g.,* submarines or open cabin vessels).

The focus of MTSA and our rule is to require the use of AIS devices on self-propelled vessels, most of which should be capable of properly operating an AIS. We recognize, however, that it may be impracticable for some vessels to install or operate AIS properly or effectively. Therefore, we have added paragraph (h)(4) to § 164.46 that specifically accommodates vessels whose design or construction makes it impracticable to operate an AIS device (*e.g.,* those that lack electrical power, have an exposed or open cabin, or are submersible) by allowing these vessels to seek up to a 5-year deviation. Further, we amended § 164.46(b)(1)(iv) to apply only to a ''self-propelled vessel engaged in dredging operations,'' instead of a ''dredge or floating plant.'' This change makes it clear that non-self propelled dredges or floating plants are not required to be outfitted with AIS shipboard devices. In so doing, however, we note that via the dredging permitting process, state authorities and the Army Corps of Engineers may seek—consistent with amended regulations in 33 CFR chapter I, subchapter C—to have AIS AtoNs installed on certain fixed structures near dredging areas when necessary to provide greater safety to those conducting dredging or transiting the area.

Another impracticability raised by a commenter at one of our public meetings was a conflict with some of the requirements (such as radio antenna separation in excess of 30 feet for a 27-foot towing vessel) set forth in the IMO installation guidelines that our NPRM incorporated by reference. The IMO AIS requirement and guidelines were tailored to large deep-draft seagoing vessels and we agree with the commenter that some of the IMO AIS guidance is impractical for the majority of small and shallow-draft vessels subject to this final rule.

The proper installation of modern electronics is very important and should be done diligently to ensure that all equipment operates according to its design and purpose and does not degrade the use of other equipment (*e.g.,* create electromagnetic interference). The commenter above who noted the conflict created by IMO AIS guidelines also brought to our attention the standard published by the NMEA.

The NMEA has for years published marine electronic installation standards that are widely used and relied upon by the industry. The NMEA, which serves a broad constituency of deep- and shallow-draft vessels, is well aware that sometimes different techniques, for example, use of thicker or better shielded cabling, may be required because of the size of the vessel or other issues. We have reviewed the AIS-related NMEA Installation Standard and find that it provides sound guidance where the IMO guidelines may be impractical for some installations on non-seagoing vessels. Therefore, to provide users an alternative and options that best serve their vessels, we have incorporated the NMEA standard by reference and have amended § 164.46(a) to include NMEA Installation Standard 0400–3.10, in the definition of ''properly installed, operational.''

Although it is not an impracticability, certain commenters expressed concerns with the requirement to continuously upkeep and ensure the accuracy of all AIS data fields. Because AIS was purposely designed to require minimal user interaction, entry for most data (*e.g.,* MMSI, vessel name, call-sign, IMO

number, type, dimensions, and antenna location) is required only once, at the time of installation. All AIS dynamic data (*e.g.,* position, speed over ground, course over ground) are either fed into AIS via an external source or derived from the device's internal Global Navigation Satellite System, all without user interaction. There are, however, four AIS ''voyage related'' data fields (*i.e.,* navigation status, destination location, estimated time of arrival, and static draft) that do require manual updating as conditions change.

To ease the burden and ensure consistent and accurate data encoding among all AIS users, we have developed an *AIS Encoding Guide* that is available at our ''AIS Frequently Asked Questions'' (FAQ #2) page at *http://www.navcen.uscg.gov/?pageName=AISFAQ.* In this guide, users are advised to use their maximum draft instead of static draft, thus eliminating the need to update this field. The guide also provides formatting conventions that allow ferry operators who continuously operate between two set locations, or operators of vessels that perform ''voyages to nowhere'' (such as workboats, dinner or excursion vessels, and certain other vessels that operate to and from their home berths), to encode their ''Destination'' and ''ETA'' fields only once.

For vessels that operate between multiple ports and berths, we have, as requested by the U.S. Army Corp of Engineers and in support of the Federal/Industry Logistics Standardization (FILS), adopted the FILS code as the unique identifier for their destinations. Through our association with the Radio Technical Commission for Maritime Services (RTCM), we anticipate that this uniform coding scheme will be embraced by software and charting manufacturers and that they will develop simpler ways to encode this information into AIS and other systems. Thus, the only AIS parameter that most domestic AIS users must maintain is the vessel's ''navigation status,'' which usually requires only a selection from a drop-down menu on the vessel's AIS, and can be easily remembered because it will usually require updating only to reflect a change in the vessel's navigation lights or day shapes. We anticipate that this process will be automated in the future when AIS is also integrated with the vessel's navigation light controller. *See* IMO Resolution MSC.253(83), ''Performance Standard for Navigation Light Controllers.''

5. AIS and Nationwide AIS

Some commenters questioned whether we should require AIS in areas where we do not have infrastructure in place to receive AIS data. First, as noted in our NPRM, the use of AIS from vessel to vessel may prevent collisions wherever it is used and does not require the existence of shore-side AIS infrastructure to do so. Second, since 2007, our Nationwide AIS (NAIS) project has provided us with AIS receive capability throughout the Great Lakes, U.S. coastal waters and approaches, and in the most congested portions of the Western Rivers. In those few areas where we do not currently have coverage, we anticipate that most potential users will avail themselves of the waiver process because of the low number of users that operate in these areas, such as the Colorado and Snake Rivers. For further information on NAIS and its coverage, visit *http://www.uscg.mil/hq/g-a/Ais/.*

6. Fishing Industry Concerns

Various commenters questioned the need for AIS on fishing vessels, noting that these vessels are already being tracked by Vessel Monitoring Systems (VMS). As we have stated previously (68 FR 39353, ''Existing AIS-Like Systems''), AIS and the National Marine Fisheries Service (NMFS) VMS devices are two distinct systems that are not interoperable or interchangeable. The NMFS VMS is primarily a one-way system required by NMFS as a means of monitoring and enforcing compliance with NMFS requirements. Conversely, AIS is a two-way system designed as a means for AIS users to exchange navigation information for collision avoidance, something the NMFS VMS is not designed to do. This two-way system permits AIS to be both a safety and a security tool.

Some commenters also expressed concern about the impact AIS would have on disclosing their fishing ''hot spots'' (*i.e.,* preferred fishing locations). Various commenters expressed concerns that the use of AIS would cause congestion by revealing the locations of a fishing vessel's hot spots. Even if analysis of AIS data would somehow attract vessels to the same spot, this situation would not supersede the importance of AIS in providing fishing vessels and other operators with situational awareness to help safely navigate while in close proximity to other vessels. For similar reasons, existing Navigation Rules specifically require any vessel engaged in fishing to display distinctive lights or day shapes, which indicate to other vessels that the fishing vessel may be unable to maneuver to avoid collision; AIS simply extends the range of this warning.

7. AIS Class B

We received numerous replies to our solicitation on whether the option to use AIS Class B devices to satisfy AIS requirements should be discretionary or whether we should clearly specify in this final rule which vessels may use it and on which waterways. Class B devices are compatible and less expensive than AIS Class A devices, but, are not as functional (lack safety related text messaging capability), powerful (transmit at 2 Watts vice 12.5 Watts) or versatile (lack interfacing options for external sensors or displays). For other differences *see* ''AIS Comparison by Class Sheet'' at *http://www.navcen.uscg.gov/pdf/AIS_Comparison_By_Class.pdf.* A list of all Coast Guard type-approved equipment can be found at: *https://cgmix.uscg.mil/Equipment/EquipmentSearch.aspx.* Some commenters favored our decision to permit the use of Class B, but felt that we should prescribe or clarify who could use such devices and where. In response to these comments, and to decide which vessels should be allowed to use Class B devices and where, we solicited the assistance of the Navigation Safety Advisory Council (NAVSAC), a Coast Guard-sponsored Federal Advisory Committee chartered to provide the Secretary of DHS with guidance on navigation safety matters through the Commandant of the Coast Guard. Members of NAVSAC discussed and resolved the matter at their meeting in May 2008 (*see* USCG–2005–21869–0106). We agreed, in part, with their resolution and have amended § 164.46(b)(2) to clearly prescribe the use of U.S. Coast Guard type-approved AIS Class B devices in lieu of Class A devices on the following vessels if they are not subject to pilotage: fishing industry vessels (*i.e.,* any vessel engaged in the fishing trade), vessels engaged in dredging operations, and those vessels certificated to carry less than 150 passengers that do not operate in a Coast Guard VTS or VMRS, and that are not capable of speeds in excess of 14 knots. Class B users operating in excess of 14 knots travel a much farther distance between required position reports than Class A users would at any speed. Because of this time delay between reports, and as brought to our attention by some commenters, when viewed on a navigation display, fast-moving vessels using Class B devices would appear to jump from position to position, in contrast to a more fluid display of vessels using Class A devices.

While there may be ways to mitigate these phenomena, such as dead reckoning Class B vessels between their 30-second position reports, we believe that doing so would reduce confidence in AIS data. Therefore, we adopted a 14-knot threshold that NAVSAC included as a threshold for one of its recommendations. But we did not, as NAVSAC had recommended, extend this option to all vessels that travel only under 14 knots because we anticipate that some of these vessels (*e.g.,* vessels towing cargo) will need to use application specific messaging for the safe navigation of the vessel and such messaging is not permitted via AIS Class B (*e.g.,* cargo or voyage specific reporting to Coast Guard Sectors or Army Corp of Engineers lockmasters).

We did receive a comment questioning the use of Class B devices in a river environment where channels are close to moored vessels and another commenter questioned the use of AIS on rivers as a navigation tool because they asserted it does not take into account the change in the speed of the current. We note that AIS provides the identification and position of a vessel, as well as its course over ground and speed over ground. When making collision avoidance determinations on a river or elsewhere, speed over ground data is more desirable and reliable than speed over water data, which does not reflect the impact of a current on the vessel's speed. In § 164.46(b)(2), where we specify when AIS Class B may be used to satisfy an AIS carriage requirement, we have not excluded the use of AIS Class B on rivers.

8. AIS Displays and Integration

We received various comments regarding the installation and integration of AIS with other navigation equipment and display systems. Some stated, correctly, that we did not include these costs in our regulatory analysis. Our regulatory analysis did not include these costs because our NPRM did not propose, nor does this final rule require, that such displays be used.

AIS devices consist of a main unit and two external antennas for GPS and VHF communications. They do not require integration with other systems on board. However, the main unit of each AIS, by design, allows for various interfacing options, primarily as outputs that can be used with other shipboard systems, such as radar, electronic charting system, and multi-function displays. This interfacing option was not included in the installation or unit costs because such interfacing is not required by AIS, and because we have no means of ascertaining how many users would avail themselves of this functionality or would purchase ancillary equipment. Although the prices of AIS have dropped since our NPRM, we use the same average cost we used then as well as the installation costs since we expect them to be about the same as our estimate in the NPRM. We did not receive comments specifically on our training estimates and therefore we continue to use the estimates as presented in the NPRM. Based on our estimates and assumptions in the NPRM, we use the values below as estimates per unit, which includes the AIS device, graphical display, presentation software, and other equipment.

We have not required this integration or specified displays because standards have not yet been fully developed to ensure the safety and efficacy of such integration or presentation options, such as addressing screen clutter and target filtering. We are working with the various standards bodies to see that such standards are developed.

Further, unlike AIS Class A devices, AIS Class B devices are not required to have a Minimal Keyboard Display (MKD) and many are designed with their own display systems. Consequently, we have amended § 164.46(h)(5) in this final rule so that such users are not required to meet the provision of § 164.46(d)(2)(ii) to have the ''ability to access AIS information from the primary conning position.''

9. Installation Period

Various commenters requested that we extend the proposed 7-month installation period for vessels not currently required to have AIS. We recognize that it has been several years since we published our NPRM and that many vessel owners or operators may not have planned or budgeted for this requirement. We also recognize that the purchase and installation of AIS requires proper budgeting and planning; therefore, we are amending § 164.46(j) to extend the installation period to 12 months after the effective date of this rule (13 months after publication) to allow the industry adequate time to purchase and install the equipment required by this final rule.

One commenter stated that our proposed rule was drafted during a time when the assumption was that vessels would have installed AIS during 2008 and AIS would be operational in 2009. This commenter requested that we delay the effective date until the national economy rebounds. Since our NPRM was published in 2008, the cost of AIS has continued to drop. We have used current cost estimates and other updated data in our regulatory analysis for this final rule. And, as we noted, this final rule extends the AIS installation date to 12 months after the effective date of this rule.

10. AIS Pilot Plug

We received various comments regarding the requirements for an AIS Pilot Plug. The commenters asked whether these requirements applied to all piloted vessels and to vessels using AIS Class B, and whether an extension cord was an acceptable receptacle. In response to these comments, we amended § 164.46(g) in this final rule to clarify that the pilot plug must be within 3 feet of a permanently affixed electrical receptacle, and that these AIS pilot plug requirements apply only to vessels that embark a pilot. We also amended § 164.46(b)(2) in this final rule to preclude the use of AIS Class B to satisfy § 164.46 requirements if the vessel is subject to pilotage by other than the vessel Master or crew.

11. Supplemental Notice of Proposed Rulemaking

We received a request from a trade association and many of its members to publish a supplemental notice of proposed rulemaking (SNPRM) in lieu of this final rule because they felt that we needed more time to properly address the cumulative impact of the rule and its associated costs, and to have it reflect a more current regulatory analysis. We have taken the cost associated with this rule into consideration; please see the regulatory analysis on the docket for a discussion of the impacts of the rule on the industry. We are aware that recently issued Coast Guard regulations may impose costs on vessels subject to this rule. See discussion of our cumulative impact assessment of this rule in Section VI.A.12 above. In this rule, we have sought to impose the least burden possible while still meeting our regulatory objectives of obtaining information necessary to help enhance the safety and security of United States ports and waterways and to enhance vessel traffic management. The industry has been provided with ample notice of forthcoming requirements and the associated cost and impact regarding this rule. Although the cost is not insignificant, we see no legitimate reason to further delay implementation of the AIS MTSA directive by issuing an SNPRM.

C. Regulatory Analysis and Final Regulatory Flexibility Analysis

1. Notice of Arrival and Departure

We received public comments on the duplicative nature of the requirements and the inherent redundancy of NOAD. As a result, we eliminated our proposed NOD requirement. We also received public comments from ferry owners and operators regarding the burdensome nature of the requirements. We agreed and we will continue to exempt ferries that operate exclusively within the same COTP zone that do not carry CDC from the NOA requirements of this rule, as defined in § 160.204. Ferries that operate on a fixed route between two or more COTP zones and on a regular schedule may submit their schedule and other information required under § 160.204(a)(5)(vii) to qualify for an NOAD exemption for ferries, which reduces the burden on vessel owners and operators. We expect the number of ferries affected after these exemptions to be about 150.

We received several public comments on the Initial Regulatory Flexibility Analysis (IRFA) stating that the rule will have a disproportionate adverse economic effect on owners of vessels of 300 gross tons or less. In an attempt to alleviate some of the burden of the NOAD requirements on small entities, we have more closely aligned our NOA requirement with the CBP electronic passenger and crew arrival manifest requirements, and we have eliminated our proposed NOD requirement. In addition, U.S. vessels of 300 gross tons or less not carrying CDC and transiting two or more COTP zones are exempt under 33 CFR 160.204(a)(5)(vi). These provisions combined should help to reduce the burden on some smaller vessel owners and operators. Waivers may be granted at a COTP's discretion under 33 CFR 160.214. We also received public comments from ferry owners and operators stating that ferries should be exempted from reporting requirements if transiting two or more COTP zones. As noted, we agree and established an exemption for certain ferries in § 160.204(a)(5)(vii). Public comments also suggested maintaining the waiver provisions. We agree and have not changed the waiver provisions in § 160.214.

Please note that NOAD cost-and-impact related comments also appear above in Sections VI.A.6 (Electronic Submission), 10 (Need for NOAD Data and Agency Collaboration in Obtaining It), and 11 (Scope and Scale).

2. Automatic Identification System

We received public comments stating that AIS implementation is too costly and should not be required for smaller vessel owner and operators. Based on these comments that AIS would adversely affect small vessels owners and operators, and our assessment of the speed and maneuverability of vessels, we made a change from the proposed rule that will allow the following vessels to meet our AIS carriage requirement by installing Class B AIS devices, a less costly alternative to Class A AIS devices: (1) Fishing industry vessels, (2) Vessels that are certificated to carry more than 150 passengers, that are less than 65 feet in length, that do not operate in a VTS or VMRS area defined in Table 161.12(c) of § 161.12 of this chapter, and that are not capable of speeds in excess of 14 knots, and (3) self-propelled vessels engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels.

The Class B AIS device is significantly less expensive (average unit cost of about $700) than the Class A AIS device (average unit cost of about $3,230) (see the Regulatory Impact Analysis in the docket for more detail on cost). This change in the requirement will impact about 55 percent of the affected population of vessels and should alleviate some of the economic burden on smaller vessel owners and operators. In addition, this final rule does not require passenger vessels less than 65 feet in length to carry an AIS device if they are not certificated to carry more than 150 passengers.

We also received comments on the unaddressed associated installation cost of an AIS device. An AIS device is a standalone device that can function without the requirement of integration or a retrofit; therefore, we do not expect additional installation costs over and above the estimates presented in the NPRM. We used publicly available information to obtain the cost for each device.

VII. Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.46 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in § 164.03.

VIII. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

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

The total cost of this rule over the 10-year period of analysis at a 7-percent discount rate is $46.5 million, with annualized costs of $6.6 million. Over 98 percent of the estimated costs of this rule are a direct result of express statutory mandates.

For the NOA portion of the final rule, we estimate the total 10-year discounted cost to be about $935,597 using a 7-percent discount rate. We estimate the annualized cost to be about $133,208 using a 7-percent discount rate. Of the total overall cost for the NOA portion of this final rule, 100 percent of the costs are discretionary.

For the AIS portion of this final rule, we estimate the total 10-year discounted cost to be $46.0 million using a 7-percent discount rate, of which 0.15 percent of the costs are discretionary and 99.85 percent of the costs are from provisions expressly required by statute. We estimate the annualized cost to be $6.5 million using a 7-percent discount rate. See Table 3.

We expect benefits of this final rule to include improved security, safety and environmental protection. The Coast Guard believes that this final rule will enhance maritime and navigation safety through a synergistic effect of NOA and AIS, and will strengthen maritime security.

We believe this final rule, through a combination of NOA and AIS, will strengthen and enhance maritime security. Combining the NOA requirement with other sources such as

AIS, we expect the final rule to help us form a COP in which vessel-specific movements in our ports and waterways can be monitored in real time, enabling us to filter data from non-compliant collection mechanisms such as radar, thereby enhancing our ability to rapidly detect, identify, and track suspicious vessels.

We assess improvements to maritime security qualitatively, resulting from the improved quantity and quality of information, and enhanced communications and MDA. We expect quantitative benefits in the form of pollution prevented and casualties avoided. From our analysis of casualty cases over a 15-year period from 1996–2010, we estimate that the final rule will prevent between 85 and 106 barrels of oil from being spilled, at 7- and 3-percent discount rates, respectively, over the 10-year period of analysis. We estimate the value of casualties (deaths, injuries) avoided to be between $25.1 and $31.2 million over the same period of analysis, at 7- and 3-percent discount rates, respectively. The following table provides a comparison of regulatory impacts resulting from changes between the NPRM and the final rule.

TABLE 3—COMPARISON OF REGULATORY IMPACT CHANGES BETWEEN NPRM AND FINAL RULE

Category	NPRM	Final Rule	Reason for change
Compliance Start Date	*NOAD:* Beginning 2009 *AIS:* Mid 2009	*NOA:* April 30, 2015 *AIS:* March 1, 2016	Extension of compliance start date.
Number of vessels affected	*NOAD:* 30,850 U.S. and foreign *AIS:* 17,442 U.S. and foreign	*NOA:* 18,377 U.S. and foreign vessels. *AIS:* 5,922 U.S. and foreign vessels.	Change in applicability, as well as improved data analysis, which explains why final rule estimates are lower than in NPRM.
Costs ($ millions, 7-percent discount rate) (U.S. and Foreign vessels combined).	*NOAD:* 10-year: $51.3–$69.5 (millions) Annualized: $7.3–$9.7 (millions)	*NOA:* Foreign Costs: Mean trips, $0.73–$0.89 million (7 and 3 percent).	Decline in NOA costs due to elimination of proposed NOD requirement, the addition of several exemptions and an exception; also existing CBP requirements for electronic submissions allowed us attribute the cost of computers to CBP regulations. Change in AIS applicability; additional flexibility for compliance to include the less costly Class B AIS devices on certain classes of vessels.
		U.S. Costs: Mean trips, $0.20–$0.24 million (7 and 3 percent).	
	AIS: 10-year: $130.1 million Annualized: $18.0 million.		
		10-year: $935,597 Annualized: $133,208 (above NOA costs not in millions).	
	Total: 10-year: $181.4–$199.6 (millions) Annualized: $25.3–$27.7 (millions).		
		AIS: Foreign Costs: $0.58–$0.69 million (7 and 3 percent).	
		U.S. Costs: $45.0–$53.4 million (7 and 3 percent).	
		10-year: $46.0 million Annualized: $6.5 million.	
		Total NOA & AIS: 10-year: $46.5 million Annualized: $6.6 million.	
Benefits ($ millions, 7-percent discount rate).	*NOAD & AIS:* Enhanced MDA, synergy between both portions of rule; improved communication. *AIS:* 10-year: $24.7 million (avoided injuries, fatalities). Annualized: $3.5 million (avoided injuries, fatalities). 136 barrels of oil not spilled (10-year).	*NOA & AIS:* Enhanced MDA, synergy between both portions of rule; improved communication. *AIS:* 10-year: $25.1 million (avoided injuries, fatalities). Annualized: $3.6 million (avoided injuries, fatalities). 85 barrels of oil not spilled (10-year).	Extension of compliance start date; change in applicability.

The Coast Guard is revising the applicability of NOA and AIS to include more commercial vessels. The NOA requirements include: establishing a mandatory requirement for electronic submission of NOA, and modifying reporting content, timeframes, and procedures. This final rule will also require foreign-flag commercial vessels

300 gross tons and less to submit NOAs when transiting two or more COTP zones, will add five additional fields to the NOA information requirements (but information for two of these fields is already required by two Coast Guard fields that are being modified), and eliminate consolidated NOAs.

This final rule also updates our implementation of SOLAS AIS requirements and permits use of AIS Class B devices for certain vessels not subject to SOLAS to meet § 164.46 AIS requirements. It also extends MTSA-based AIS carriage requirements beyond the current VTS areas to all U.S. navigable waters. The MTSA-based, AIS portion of this final rule covers all commercial self-propelled vessels 65 feet or more in length (including fishing and passenger vessels), and towing vessels at least 26 feet in length and 600 horsepower. It also includes—

- Self-propelled vessels engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels, and
- Vessels moving CDC as defined in subpart C of part 160 of this chapter, or flammable or combustible liquid cargo in bulk.
- Vessels certificated to carry more than 150 passengers. The following table describes AIS carriage costs and benefits and identifies the source of each requirement:

TABLE 4—AIS CARRIAGE COSTS INCLUDING INITIALIZATION AND UPDATES, AND BENEFITS [4]

Vessels required by Final Rule to have AIS	Annualized cost (7%)/vessel population	Specific MTSA or SOLAS source provision	Coast Guard's effort to minimize cost	Benefits (quantified benefits include all affected vessels)
Commercial vessels ≥ 65 feet in length.	$4.4 million/4,402 vessels, including 2,906 fishing vessels.[5]	Title 46 U.S.C. 70114(a)(1)(A) (section 102 of MTSA). Mandatory; Under this MTSA provision, no decision by the Secretary is required to establish which vessels must have AIS.	For all vessels included based on MTSA, a deviation of up to 5 years may be granted for— • Vessels that operate solely within a very confined area (e.g., less than a 1 nautical-mile radius, shipyard, or barge fleeting facility); • Vessels that conduct only short voyages (less than 1 nautical mile) on a fixed schedule (e.g., a bank-to-bank river ferry service or a tender vessel); • Vessels that are not likely to encounter other AIS-equipped vessels; • Vessels whose design or construction makes it impracticable to operate an AIS device (e.g., those that lack electrical power, have an exposed or open cabin, or are submersible); or • Vessels denoted in paragraph (b)(2) that seek a deviation from requirements in paragraphs (d)(2)(ii) and (e) of this section because their AIS Class B device lacks a display. • Fishing vessels may use an AIS Class B unit.	By requiring AIS on the vessels listed in this table, this final rule provides AIS data that— • Enhances situational and maritime domains awareness which assists users in traffic management, safety, and security (i.e., MDA) decision-making; • Enables transportation efficiency by reducing the more dramatic ship movements required to avoid collisions when *in extremis:* lower fuel consumption, more reliable scheduling, faster transits; and • Improves, as intended by SOLAS, collision avoidance, vessel traffic services, and, a means for authorities to obtain info on vessels and their cargoes. Quantitative Benefits (all vessels classes): 85–106 barrels of oil not spilled, 7- and 3-percent discount rates, 10-year period of analysis. $25.1–$31.2 million in injuries and deaths at 7- and 3-percent discount rates over 10-year period of analysis, or $3.6 million annualized at both discount rates.

[4] We estimated the cost per vessel to carry AIS (Class A) in the 2003 MTSA final rule to be $9,500 (undiscounted). Due to decreasing costs of AIS units over the past 5–7 years, we estimate the cost per vessel to carry AIS (Class A) for this final rule to be about $4,500 (undiscounted) per vessel.

[5] These figures do not include towing vessels and dredges which are accounted for separately below.

TABLE 4—AIS CARRIAGE COSTS INCLUDING INITIALIZATION AND UPDATES, AND BENEFITS [4]—Continued

Vessels required by Final Rule to have AIS	Annualized cost (7%)/vessel population	Specific MTSA or SOLAS source provision	Coast Guard's effort to minimize cost	Benefits (quantified benefits include all affected vessels)
Passenger vessels certificated to carry more than 150 passengers and <65 feet in length.	0 vessels [6]	46 U.S.C. 70114(a)(1)(B) & (D). Discretionary; Under these MTSA provisions, a decision by the Secretary is required to establish which vessels must have AIS.	Exercised discretion under SOLAS not to include all vessels carrying more than 12 passengers. MTSA mandate based on DHS Secretary passenger-for-hire threshold determination. SOLAS mandate extends to all vessels carrying more than 12 passengers. DHS determination to adopt a threshold of more than 150 passengers takes into account the consequences of a transportation safety or security incident and the impact on small entities. • Exercised discretion under SOLAS not to include all vessels carrying more than 12 passengers. • Limited to self-propelled vessels. • Limited to vessels certificated to carry more than 150 passengers. May use an AIS Class B unit, if not in a VTS or VMRS area, and not capable of operating above 14 knots.	No quantified benefits, since no vessels in this category exist in our population of vessels.
Towing vessels ≥ 26 ft in length and 600 hp.	$2.0 million/1,429 vessels.	46 U.S.C. 70114(a)(1)(C) ..... Mandatory; Under this MTSA provision, no decision by the Secretary is required to establish which vessels must have AIS.	.....	Although expressly required by MTSA, owners and operators of these towing vessels accrue the same benefits as owners and operators all other vessels equipped with AIS. Quantified benefits included in first category of this table.
Dredges	$0.010 million/17 vessels.	46 U.S.C. 70114(a)(1)(D) ..... Discretionary; Under this MTSA provision, a decision by the Secretary is required to establish which vessels must have AIS.	• Limited to self-propelled vessels. • Limited to vessels that are engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels. • May use an AIS Class B unit ..	Provides greater awareness to vessels engaged in dredging near a commercial channel of approaching vessels, and provides approaching vessels with greater awareness of dredging activity, and thus addresses the risk of collisions and other mishaps involving such vessels. Quantified benefits included in first category of this table.
Vessels engaged in the movement of certain dangerous cargo or flammable or combustible liquid cargo in bulk.	nil [7]/0 vessels (Vessels included in first category of this table).	46 U.S.C. 70114(a)(1)(D) ..... Discretionary; Under this MTSA provision, a decision by the Secretary is required to establish which vessels must have AIS.	Limited to self-propelled vessels of 26 feet or under.	Provides greater awareness to vessels carrying CDC of approaching vessels, and provides all other AIS users with greater awareness, and thus addresses the risk of collisions and other mishaps involving such vessels. Quantified benefits included in first category of this table.

TABLE 4—AIS CARRIAGE COSTS INCLUDING INITIALIZATION AND UPDATES, AND BENEFITS [4]—Continued

Vessels required by Final Rule to have AIS	Annualized cost (7%)/vessel population	Specific MTSA or SOLAS source provision	Coast Guard's effort to minimize cost	Benefits (quantified benefits include all affected vessels)
Vessels ≥300 gross tonnage, on an international voyage.	nil [8]/0 vessels	SOLAS Art. I, SOLAS, 32 U.S.T. 47, and the Protocol of 1978 relating to SOLAS, 32 U.S.T. 5577. SOLAS, Chapter V, regulation 1.4 and 19.2.4. Mandatory; Under this SOLAS provision, no decision by the Secretary is required to establish which vessels must have AIS.	Use of an AIS Class B Device is not permitted under SOLAS.	As a Contracting Government to SOLAS, the United States has a responsibility to implement mandatory SOLAS provisions such as these AIS, SOLAS Chapter V provisions.
A vessel of ≥150 gross tonnage, when carrying more than 12 passengers on an international voyage.	nil [9]/0 vessels	Same as above	Same as above	Same as above.

We have placed NOAD applicability and exemption provisions from both the final rule and the NPRM adjacent to each other in the following derivation and comparison table so that you may quickly identify differences in vessels covered by this final rule compared with those the NPRM proposed to cover.

TABLE 5—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND NPRM APPLICABILITY AND EXEMPTION PARAGRAPHS IN 33 CFR PART 160

Final rule paragraph in 33 CFR part 160	Final rule text	NPRM paragraph in 33 CFR part 160	Proposed rule text
§ 160.203(a)	This subpart applies to the following vessels that are bound for or departing from ports or places within the navigable waters of the United States, as defined in 33 CFR 2.36(a), which includes internal waters and the territorial seas of the United States, and any deepwater port as defined in 33 CFR 148.5: (1) U.S. vessels in commercial service, and (2) All foreign vessels.	§ 160.203(a)	This subpart applies to U.S. vessels in commercial service and all foreign vessels that are bound for or departing from ports or places of the United States.
§ 160.204(a)	NO CHANGE FROM NPRM	§ 160.204(a)	Except for reporting notice of hazardous conditions, the following vessels are exempt from requirements in this subpart:
(1)	NO CHANGE FROM NPRM	(1)	A passenger or offshore supply vessel when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf.
(2)	NO CHANGE FROM NPRM	(2)	An oil spill response vessel (OSRV) when engaged in actual spill response operations or during spill response exercises.
(3)	After December 31, 2015, a vessel required by 33 CFR 165.830 or 165.921 to report its movements, its cargo, or the cargo in barges it is towing.	(3)	A vessel required by 33 CFR 165.830 or 165.921 to report to the Inland River Vessel Movement Center (IRVMC).
(4)	A United States or Canadian vessel engaged in the salving operations of any property wrecked, or rendering aid and assistance to any vessels wrecked, disabled, or in distress, in waters specified in Article II of the 1908 Treaty of Extradition, Wrecking and Salvage (35 Stat. 2035; Treaty Series 502).	.....	NO CORRESPONDING PARAGRAPH.

[6] All passenger vessels certificated to carry more than 150 passengers are > 65 feet in length and are included in the > 65 feet category above.

[7] The analysis assumes that any vessel transporting or moving a barge containing CDC falls into one of the above categories (*e.g.,* commercial vessel ≥ 65 ft; towing vessel ≥ 26 ft & 600 hp). This category of vessels is specified in the regulations to ensure that in the future, any vessel regardless of size/category moving CDC has an AIS unit.

[8] This requirement covers the same vessels captured by our previous corresponding SOLAS requirements, or by MTSA's requirement for commercial vessels ≥ 65 ft in length.

[9] This requirement covers the same vessels as our existing corresponding SOLAS requirement.

TABLE 5—NOAD DERIVATION AND COMPARISON TABLE: FINAL RULE AND NPRM APPLICABILITY AND EXEMPTION PARAGRAPHS IN 33 CFR PART 160—Continued

Final rule paragraph in 33 CFR part 160	Final rule text	NPRM paragraph in 33 CFR part 160	Proposed rule text
(5)	NO CHANGE IN TEXT FROM NPRM	(4)	The following vessels neither carrying certain dangerous cargo nor controlling another vessel carrying certain dangerous cargo:
(i)	NO CHANGE FROM NPRM	(i)	A foreign vessel 300 gross tons or less not engaged in commercial service.
(ii)	NO CHANGE FROM NPRM	(ii)	A vessel operating exclusively within a single Captain of the Port Zone. Captain of the Port zones are defined in 33 CFR part 3.
(iii)	A U.S. towing vessel and a U.S. barge operating solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia.	(iii)	A U.S. towing vessel and a U.S. barge operating solely between ports or places of the continental United States.
(iv)	NO CHANGE FROM NPRM	(iv)	A public vessel.
(v)	NO CHANGE FROM NPRM	(v)	Except for a tank vessel, a U.S. vessel operating solely between ports or places of the United States on the Great Lakes.
(vi)	A U.S. vessel 300 gross tons or less, engaged in commercial service not coming from a foreign port or place.	(vi)	A U.S. vessel 300 gross tons or less, engaged in commercial service not coming from a foreign port or place.
(vii)	Each ferry on a fixed route that is described in a schedule that is submitted by the ferry operator, along with information in paragraphs (a)(5)(vii)(A)–(J) of this section, to the Captain of the Port for each port or place of destination listed in the schedule at least 24 hours in advance of the first date and time of arrival listed on the schedule. At least 24 hours before the first date and time of arrival listed on the ferry schedule, each ferry operator who submits a schedule under paragraph (a)(5)(vii) of this section must also provide the following information to the Captain of the Port for each port or place of destination listed in the schedule for the ferry, and if the schedule or the following submitted information changes, the ferry operator must submit an updated schedule at least 24 hours in advance of the first date and time of arrival listed on the new schedule and updates on the following items whenever the submitted information is no longer accurate: (A) Name of the vessel; (B) Country of registry of the vessel; (C) Call sign of the vessel; (D) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel; (E) Name of the registered owner of the vessel; (F) Name of the operator of the vessel; (G) Name of the vessel's classification society or recognized organization, if applicable; (H) Each port or place of destination; (I) Estimated dates and times of arrivals at and departures from these ports or places; and (J) Name and telephone number of a 24-hour point of contact.		NO CORRESPONDING PARAGRAPH.
(6)	April 30, 2015 through December 31, 2015, vessels identified as being subject to 33 CFR 165.830 or 165.921.		NO CORRESPONDING PARAGRAPH.
§ 160.215	NO CHANGE FROM NPRM	§ 160.215	When a vessel is bound for a port or place of the United States under force majeure, it must comply with the requirements in this section, but not other sections of this subpart.

We have placed AIS applicability provisions from both the final rule and the NPRM adjacent to each other in the following derivation and comparison table so that you may readily identify differences in vessels covered by this final rule compared with those the NPRM proposed to cover.

TABLE 6—AIS DERIVATION AND COMPARISON TABLE: FINAL RULE AND NPRM APPLICABILITY PARAGRAPHS IN 33 CFR 164.46

Final rule paragraph in 33 CFR 164.46	Final rule text	Corresponding NPRM paragraph in 33 CFR 164.46	Proposed rule text
(b)(1)	AIS Class A device. The following vessels must have on board a properly installed, operational Coast Guard type-approved AIS Class A device:	(b)	The following vessels must have onboard a properly installed, operational, Coast Guard type-approved Automatic Identification System (AIS):
(i)	NO CHANGE IN TEXT FROM NPRM.	(1)	A self-propelled vessel of 65 feet or more in length, engaged in commercial service;
(ii)	A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial service.	(2)	A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial towing;
(iii)	A vessel that is certificated to carry more than 150 passengers.	(3)	A self-propelled vessel carrying 50 or more passengers, engaged in commercial service;
	NO CORRESPONDING TEXT IN FINAL RULE.	(4)	A vessel carrying more than 12 passengers for hire and capable of speeds in excess of 30 knots;
(iv)	A self-propelled vessel engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels.	(5)	A dredge or floating plant engaged in or near a commercial channel or shipping fairway in operations likely to restrict or affect navigation of other vessels except for an unmanned or intermittently manned floating plant under the control of a dredge; and
(v)	A self-propelled vessel engaged in the movement of— (A) Certain dangerous cargo as defined in subpart C of part 160 of this chapter, or (B) Flammable or combustible liquid cargo in bulk that is listed in 46 CFR 30.25–1, Table 30.25–1.	(6)	A self-propelled vessel carrying or engaged in the movement of certain dangerous cargoes as defined in § 160.202 of this subchapter.
(b)(2)	AIS Class B device. Use of a U.S. Coast Guard type-approved AIS Class B device in lieu of an AIS Class A device is permissible on the following vessels if they are not subject to pilotage by other than the vessel Master or crew:	See Note to paragraph (b).	NO CORRESPONDING PARAGRAPH, but see explanatory ''Note to paragraph (b): Except for those vessels denoted in paragraph (c) of this section, use of Coast Guard type-approved AIS Class B is permissible, however, not well-suited, on vessels that are highly maneuverable, navigate at high speed, or routinely operate on or near very congested waterways or in close-quarter situations with other AIS equipped vessels.''
(i)	Fishing industry vessels		NO CORRESPONDING PARAGRAPH.
(ii)	Vessels identified in paragraph (b)(1)(i) of this section that are certificated to carry less than 150 passengers, and that— (A) Do not operate in a VTS or VMRS area defined in Table 161.12(c) of § 161.12 of this chapter, and (B) Do not operate at speeds in excess of 14 knots; and engaged in dredging operations; and		NO CORRESPONDING PARAGRAPH.
(iii)	Vessels identified in paragraph (b)(1)(iv) of this section engaged in dredging operations.		NO CORRESPONDING PARAGRAPH.
(c)	SOLAS provisions. The following self-propelled vessels must comply with International Convention for Safety of Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6 (Positioning System), 19.2.4 (AIS Class A), and 19.2.3.5 (Transmitting Heading Device) or 19.2.5.1 (Gyro Compass) as applicable (Incorporated by reference, see § 164.03):	(c)	SOLAS provisions. The following self-propelled vessels must comply with International Convention for Safety of Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6, 19.2.4 (AIS Class A), and 19.2.3.5 or 19.2.5.1 as applicable (Incorporated by reference, see § 164.03):
	NO CORRESPONDING PARAGRAPH.	(1)	A vessel of 500 gross tonnage or more;
(1)	A vessel of 300 gross tonnage or more, on an international voyage.	(2)	A vessel of 300 gross tonnage or more, on an international voyage; and

TABLE 6—AIS DERIVATION AND COMPARISON TABLE: FINAL RULE AND NPRM APPLICABILITY PARAGRAPHS IN 33 CFR 164.46—Continued

Final rule paragraph in 33 CFR 164.46	Final rule text	Corresponding NPRM paragraph in 33 CFR 164.46	Proposed rule text
(2)	NO CHANGE IN TEXT FROM NPRM.	(3)	A vessel of 150 gross tonnage or more, when carrying more than 12 passengers on an international voyage.

To eliminate confusion and redundancy within the industry, we have generally aligned our NOA regulations with CBP regulations under its APIS final rule (70 FR 17820, as amended at 72 FR 48320), which requires that vessels arriving from a foreign port or place to submit arrival manifests and those departing for a foreign port or place to submit departure manifests. The submission of an NOA itself for this population of vessels is not a new requirement. However, we have added five fields (vessel's MMSI number, whether vessel 300-gross-ton-or-less, whether voyage less than 24 hours, last port of departure, and arrival and departure date for last port of departure) to the NOA, two of which are already required by two Coast Guard requirements that we are modifying. A NOD will not be required in this final rule.

This rule will also require foreign commercial vessels 300 gross tons or less that transit two or more COTP zones to submit an NOA, which is not currently a CBP requirement. In addition, these vessel owners would be eligible to seek waivers under § 160.214 at the discretion of the COTP, a current Coast Guard practice.

This final rule will require the electronic submission of an NOA, and will modify related reporting content, timeframes, and procedures. This rule will also create an efficient and timesaving method of notification thereby reducing the hour burden on industry and Coast Guard resources.

Our 60-minute notice time provides flexibility for owners of smaller U.S.-flag vessels and certain Canadian-flag vessels, because these businesses would continue to be able to operate efficiently as charter businesses due to the spontaneous nature of their business. This requirement also better aligns with the CBP's current requirement, which will alleviate confusion within the industry and provide consistency for the public.

We estimate the NOA portion of this rule will affect approximately 3,430 U.S. vessels and 14,947 foreign-flag vessels. The following estimates use a 7-percent discount rate over a 10-year period of analysis. We estimate the annual cost to U.S. vessel owners and operators to be about $28,706. We estimate the annual cost to foreign-flag vessel owners and operators to be about $104,502. We estimate the 10-year NOA cost to U.S. vessel owners and operators to be about $201,619. We estimate the 10-year NOA cost to foreign-flag vessel owners and operators to be about $733,978. We estimate the total annualized costs of the NOA requirements for both U.S. and foreign owners and operators to be about $133,208. We estimate the total present value 10-year costs of the NOA requirements for both U.S and foreign-flag vessel owners and operators to be about $935,597. We estimate this rule will add less than 1 dollar per vessel trip on average for an owner or operator to submit an NOA.

The AIS costs associated with this rule as presented are a result of the AIS carriage requirement, which includes the AIS device cost, installation, maintenance, training, replacement costs, unit initialization, and voyage specific updates. We estimate the AIS provisions will affect about 5,848 U.S. vessels and about 74 foreign-flag vessels.

The following estimates use a 7-percent discount rate over a 10-year period of analysis. We estimate, for owners and operators of U.S. vessels that will be required to carry AIS onboard, the 10-year present value cost to be $45.0 million, with annualized costs of about $6.4 million at a 7-percent discount rate. We estimate for owners and operators of foreign-flag vessels the present value 10-year cost of this final rule to be $585,000, with annualized costs of about $83,000. We estimate for all owners and operators of U.S.- and foreign-flag vessels the total present value 10-year cost of the AIS provisions to be $45.5 million, with annualized costs of about $6.5 million.

We estimate the total present value 10-year cost of the final rule, including both NOA and AIS provisions, to be $46.5 million, with annualized costs of about $6.6 million. In our sample of 77 small entities, we found these entities owned 244 total vessels, or about 3 vessels per entity. Again, for the purpose of our analysis, we assumed all owners would install a Class A AIS device since we were not able to determine which small entities would choose to install the less costly Class B AIS device. Each small entity will purchase one AIS device for each vessel it owns. If a small entity owns one vessel, it will purchase one AIS device to meet the requirements of this final rule. We estimate this final rule will cost a small entity on average between about $2,000 and $14,300 to install, maintain, and carry AIS onboard depending upon the vessel class and whether the vessel will carry a Class A unit or Class B unit and to submit the three additional NOA fields. See Table 7.

TABLE 7—COST PER SMALL ENTITY TO CARRY THREE AIS UNITS AND SUBMIT THREE ADDITIONAL NOA FIELDS

Type of AIS unit	Types of vessels to install	Average cost per owner/operator to purchase on average three AIS units and complete three additional NOA fields
Class B plus NOA submissions	Commercial Fishing and vessels engaged in dredging operations.	$6,051 (initial year: $6,027 for three AIS units and $24 for three additional NOA fields). $774 (annually: $250 for AIS maintenance and $24 for three additional NOA fields).

TABLE 7—COST PER SMALL ENTITY TO CARRY THREE AIS UNITS AND SUBMIT THREE ADDITIONAL NOA FIELDS—Continued

Type of AIS unit	Types of vessels to install	Average cost per owner/operator to purchase on average three AIS units and complete three additional NOA fields
Class A plus NOA submissions	All other vessels classes	$14,340 (initial year: $14,316 for three AIS units and $24 for three additional NOA fields). $1,473 (annually: $1,449 for AIS including updates and $24 for three additional NOA fields).

We expect this final rule to improve the quantity and quality of information, and enhance communications and MDA. We believe this final rule, through a combination of NOA and AIS, will strengthen maritime and national security. This rule will include a large number of vessels not currently covered under the current NOA and AIS regulations. We expect this final rule will provide us with a better understanding of vessels coming to the United States and help us determine which vessels may pose a threat as a target, weapon, or transport of suspicious persons and/or materials. NOA provides us advance warning of those intending to enter our waters, and electronic submission allows us greater time to evaluate this information, and to take action if warranted based on information about a potential threat by the vessel or persons on board the vessel. Specifically, the NOA requirement is combined with other sources such as AIS to form a COP in which vessel-specific movements in our ports and waterways can be monitored in real time enabling us to filter data from non-compliant collection mechanisms such as radar, thereby enhancing our ability to rapidly detect, identify, and track suspicious vessels. This information is used as a decision making aid by the Coast Guard field commanders and is also referenced in support of interagency and Department of Defense homeland security efforts. Creating this COP helps the Coast Guard prioritize its limited resources and meet mission requirements while maintaining MDA. Moreover, along with passenger, crew and cargo information required by CBP, we can determine if a suspicious person is onboard a vessel and by adding AIS, we can determine the position of the suspicious vessel. We believe NOA and AIS combined will serve as a deterrent and will enhance Coast Guard interdiction capabilities, but will not completely eliminate the risk of maritime transportation incidents.

As previously mentioned, we have added three NOA data fields that are new to industry. The addition of the MMSI number provides Coast Guard a unique identifier for the vessel which correlates NOA and AIS data and provides an accurate picture of location, and verification of identity of the vessel. The addition of the field ''less than 300 gross tons'' allows the Coast Guard an opportunity to prioritize the screening of vessels, schedule inspections, and possibly establish security or safety zones. The addition of the field, ''voyage less than 24 hours'' will allow certain vessels that meet an exemption, such as U.S. flag vessels, to clarify that their voyage is less than 24 hours and eliminate the possibility of any delays or penalties that they may incur as a result of not submitting an NOA in a timely manner. The change to a 60-minute notice of arrival time for U.S. vessels under 300 gross tons provides flexibility and relief to small entities that typically own and operate vessels of this size.

AIS provides further benefits by allowing for rapid filtering of data from mechanisms that do not rely on vessel cooperation (*e.g.,* radar) and thus enhances security-related missions. AIS enables us to quickly locate, track, and intercept these vessels. This is a similar approach as taken for air transportation: Flight plan, passenger manifests and traffic control tracking.

From a security perspective, vessels pose a risk in three ways: They can be used as a weapon for terrorists (*e.g.,* ramming another vessel or infrastructure component), they can be used to transport personnel/materials for an attack, or they can be used as the target of an attack. This rule helps focus Coast Guard and other resources to mitigate security risk across all three scenarios. Specifically, to determine if a vessel can be used as a weapon, a target, or as a transport vehicle, the Coast Guard has several tools at its disposal that assign risk based on valuable information contained in an NOA, such as crew and passenger information that CBP and the FBI use to identify persons or vessels that may pose a security risk to the United States. After receiving the NOA information, the data are placed into a database or matrix (dependent on the tool being used). Points are assigned to each vessel and a vessel is then given a priority ranking based on its type and stated cargo. Above a certain threshold, the Coast Guard determines whether a vessel requires an escort to reduce the possibility of the vessel being used as a weapon, a target, or as a transport of suspicious persons or materials, such as weapons of mass destruction (WMD) or weapons of mass effect (WME). If necessary, the vessel may be boarded or inspected to ensure it meets international safety and security standards.

We expect this rule to provide quantifiable benefits in the form of barrels of oil not spilled in addition to benefits from avoided injuries and fatalities. For the NPRM, we based quantifiable benefits on a review of 64 marine accident cases from our MISLE database for the period 1996–2003 in order to obtain casualty reports involving commercial vessels that may have benefitted from an onboard AIS unit. For the final rule, we also examined casualty cases for the period 2004–2010 and found an additional 21 cases where AIS may have been beneficial in preventing an accident. For the period 1996–2009, we estimate the final rule will prevent 85 to 106 barrels of oil from being spilled during a 10-year period of analysis. We also analyzed more than 800 casualty incidents for 2010 and found only three cases where AIS may have been beneficial; however, the three cases did not involve any injuries, fatalities, death, or pollution and therefore did not provide additional benefits.

Using a VSL of $9.1 million, we also estimated additional benefits (from avoided injuries and fatalities) of $25.1 million at a 7-percent discount rate, during the 10-year period of analysis or an annualized amount of about $3.6 million. The VSL estimate is based on the 2013 memorandum from DOT titled ''Guidance on Treatment of the Economic Value of a Statistical Life in U.S. Department of Transportation Analyses.'' This memorandum is available in the docket as detailed under **ADDRESSES**. The VSL is not an estimate of the value of a person's life, but is instead a technical valuation of the amount one would be willing to pay to

reduce the probability of fatality. For example, a $9.1 million VSL means the public is willing to pay $9.10 to reduce the risk of a fatality by 1 in a million.

Our evaluation of the 85 accident cases, including 2010, also resulted in about $5.1 million in property damage or about $350,000 per year.

AIS helps reduce the risk of attack in two ways: (1) Reducing the likelihood of a successful attack, and (2) reducing the consequences should a successful attack occur. AIS reduces the likelihood of a successful attack which arises from the enhanced ability to defeat an attack. We identify the steps require to defeat an attack and how AIS helps to detect an attack in Table 20 of the regulatory analysis available on the docket for review. In Table 22 of the regulatory analysis, we also present illustrative scenarios where NOA in conjunction with AIS may be helpful in attacks ranging from any attack versus any size passenger vessel to an attack versus a cruise ship from a large VBIED. AIS also assists in identifying vessels in position to assist with emergency response/search and rescue by showing location of vessels in response operations and their proximity to vessels in need of response resources. This works for all attack types by reducing the time to get assisting vessels on the scene of the incident.

We performed a breakeven analysis based on common passenger vessel capacity amounts of 12 (threshold in Regulation 2 of the SOLAS International Convention), 150 (threshold used in the 2003 AIS Final Rule), and 2,000 (for large cruise ships that may be potential targets of smaller vessels that carry a vessel borne improvised explosive device (VBIED)). Table 8 that follows presents the annual risk reduction required for passenger vessels with certain passenger capacities for the final rule to breakeven. We estimated the annualized cost for the 288 passenger vessels, affected by this rule, at a 7-percent discount rate to be $0.33 million. Using the scenario of 150 lives saved for passenger vessels as our example, we can determine the number of years the final rule will have to prevent one incident involving 150 casualties in order for benefits to outweigh costs. From Table 8, the benefit from casualties avoided is $1.4 billion using $9.1 million as the value of a statistical life. Using the annualized cost of $0.33 million for this population of passenger vessels affected by the final rule (288), we can determine the number of years the final rule would have to prevent one casualty in order for benefits to outweigh costs. Multiplying $0.33 million by the variable ''time'' and equating it to the benefit value of $1.4 billion, we solve for time to obtain 4,136 years, meaning the final rule would have to prevent one casualty incident involving 150 passengers in this time period for the final rule to be beneficial.

TABLE 8—ANNUAL RISK REDUCTION REQUIRED FOR COSTS TO EQUAL BENEFITS FOR PASSENGER VESSELS WITH CERTAIN PASSENGER CAPACITIES

[Annual costs at 7-percent discount rate]

Potential casualties avoided	Benefit from casualties avoided ($millions)	Annualized cost for passenger vessels ($millions)	Risk reduction required (%)	Risk reduction required (years between averted attacks)
12	$109.2	$0.33	0.30	331
150	1,365	0.33	0.02	4,136
2,000	18,200	0.33	0.0018	55,152

These estimates do not reflect the full socioeconomic benefits of oil spill mitigation and risk reduction associated with vessels, which include avoided damages to the ecosystem and regional and national economic impacts. The scenarios above show the loss of human capital only for passenger vessels with certain passenger capacities specified above, and with no regard for physical assets, it likely underestimates the monetary effects of a terrorist incident. The human capital scenario shown as benefits from casualties avoided provide a useful account of the risk reduction in years required for the final rule to breakeven.

In the regulatory analysis, for the entire casualty period 1996–2010, about 14 barrels of oil were spilled annually. We estimate the total benefit or barrels of oil not spilled for all 85 casualty cases between 1996 and 2010 to be between 85 and 106 barrels over the 10-year period of analysis at 7- and 3-percent discount rates, respectively. We expect annualized unmonetized benefits to be about 12 barrels of oil not spilled. The Regulatory Analysis for the final rule contains additional discussion of benefits, including qualitative benefits.

The NOA provisions provide the ability to perform advanced screening of cargo, passengers and crew, thus enabling interdiction of illicit activities including smuggling of weapons of mass destruction and/or terrorists. These provisions also enable the planning and prioritization of other protective measures, including protecting surrounding critical infrastructures from attacks using the vessel and/or protecting the vessel itself from attack. Given the range of attacks from a small passenger vessel to a cruise ship and the type of attack from a small device to a large VBIED as presented in the regulatory analysis, the casualty range can vary greatly, where the breakeven point can be minor to extremely minor. NOA may help prevent attacks from a man portable device with just one fatality, which would require only one attack prevented every 88 years up to an attack with major consequences from a WMD or WME.

The AIS provisions support real-time situational awareness of vessel position and movements, and enable the detection of unusual/threatening operations and subsequent interdiction. AIS requirements also provide for a better understanding of resources in the area of an incident and thus enable more effective response planning. Combined with NOA provisions, AIS requirements further provide the ability to compare actual operations with stated plans, thus enabling the identification of potentially threatening activities.

See the ''Regulatory Analysis'' in Docket No. USCG–2005–21869 at *http://www.regulations.gov* for details of these calculations. The following link will take you directly to the docket: *http://www.regulations.gov/#!docketDetail;D=USCG-2005-21869.*

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this final rule would have a significant economic impact on a substantial number of small entities. 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.

Final Regulatory Flexibility Analysis

When an agency promulgates a final rule under section 4 of the Administrative Procedure Act, 5 U.S.C. 553, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States, under 5 U.S.C. 603(a), the agency must prepare a Final Regulatory Flexibility Analysis (FRFA) or have the head of the agency certify pursuant to 5 U.S.C. 605(b) that the final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act (RFA) prescribes the content of the FRFA in 5 U.S.C. 604(a), a summary of which we discuss below.

(1) The RFA requires a succinct statement of the need for, and objectives of, the final rule.

Coast Guard response: The need and objective of this final rule is to (1) fully implement the Marine Transportation Security Act of 2002 AIS directive found at 46 U.S.C. 70114, (2) implement SOLAS AIS requirements including provisions in V/19.2.4.3 that went into force internationally July 1, 2008, and (3) expand NOA requirements and streamline the processing of these data to further enhance Homeland Security under Ports and Waterways Safety Act authority (33 U.S.C. 1225 & 1226) by increasing our awareness of vessels and people entering or departing U.S. ports or places. Prompt receipt of NOA and AIS data will assist the Coast Guard in preventing damage to structures on, in, or adjacent to the navigable waters of the United States and in protecting those navigable waters in the marine environment. AIS data will also assist vessels in avoiding collisions. This rule will affect a larger portion of relatively smaller vessels, which are not currently included under existing regulations (including fishing vessels).

(2) The RFA requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary 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.

Coast Guard response: We summarize the public comments we received on the NPRM in section VI.C of the preamble.

(3) The RFA requires a description of and an estimate of the number of small entities to which the final rule will apply or an explanation of why no such estimate is available.

Coast Guard response: As previously discussed, this rule will affect owners and operators of vessels that will be required to submit an NOA in addition to vessel owners and operators that will be required to carry and operate an AIS unit onboard. This Final Regulatory Flexibility Analysis is based on our analysis of the requirements of the AIS portion of this rule as discussed in the separate Regulatory Analysis available in the docket for review. The addition of nine data fields to the NOA information requirements (only three of which are new to industry) will impose minor costs on industry because of the small burden associated with performing the task. The majority of the cost impact of this rule on small entities stems primarily from the AIS portion of this rule. We estimate that 5,821 U.S.-flag vessels will be affected by the AIS portion of this rule and we expect that a majority of these vessels may be owned by small entities based on our analysis.

Based on current Coast Guard data, we estimate this rule will affect about 3,333 U.S. companies (entities) that own approximately 9,278 vessels. We randomly selected a sample size of 345 vessel owners and operators to reach the 95 percent confidence level. We found revenue and employee information on 104 of the entities in the sample using publicly available information. Of these, we found 77 to be small entities according to Small Business Administration (SBA) size standards. We did not find government or non-profit entities in our sample. We consider the 241 with no revenue or employee information to be small entities, as the lack of available information likely indicates smaller entity size.

We estimated the potential initial and annual revenue impact for each owner and operator that will be required to have AIS on board. We multiplied the initial and annual costs of AIS installation by the number of vessels that each entity owns and then divided by the average annual revenues for each small entity to obtain the share of costs to total annual revenues.

We classified small entities by the North American Industry Classification System (NAICS) code for those entities that had revenue and size data. The 77 small entities with data are represented by 34 different NAICS codes or categories. We determined if a business was small by using the SBA size standards for each NAICS code. We found that 7 NAICS categories represent about 55 percent or 42 of the 77 small entities that we analyzed. The remaining 45 percent (or 35 small entities) of small entities are represented by 27 different NAICS categories with about 1 percent of the population of small entities in a majority of the categories.

Based on the 7 NAICS categories that represent 55 percent of the small entities with data, about 43 percent or 33 of the 77 small entities are classified by 5 NAICS categories: ''Finfish Fishing,'' ''Inland Water Freight Transportation,'' ''Shellfish Fishing,'' ''Navigational Services to Shipping,'' and ''Fish and Seafood Merchant Wholesalers''. Based on available data, we did not find evidence that small not-for-profit organizations or small government jurisdictions will be impacted by this rule.

(4) The RFA requires a description of the projected reporting, recordkeeping and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Coast Guard response: The final rule will require modifications to two existing OMB-approved collections ''Advance Notice of Arrival and Departure'' (OMB Control Number 1625–0100) and ''Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data'' (OMB Control Number 1625–0112). Five data elements will be added to the collection of information (1625–0100) and one will be deleted; of the five added data elements, only three (MMSI, Whether vessel is 300 GT or less, and whether the vessel's voyage time is less than 24 hours) are new to industry. We believe the burden for this additional element is so minimal that a change to the total burden estimate for this collection is unnecessary.

The projected reporting and recordkeeping, other compliance requirements of the final rule, and types of activities and skills necessary for the preparation of NOAs and AIS information are described in section VIII. D., ''Collection of Information.''

(5) 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.

Coast Guard response: The Coast Guard did not receive comments on the NPRM from the Chief Counsel for Advocacy of the Small Business Administration.

(6) The RFA requires 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 one of the other significant alternatives to the final rule considered by the agency which affect the impact on small entities was rejected.

Coast Guard response: The requirements for notice of arrival in this final rule for vessels, regardless of size, coming from a foreign port or place will be applied to vessels that are already required to comply with the CBP's APIS requirements. The evaluation of alternatives for this part of the final rule is unnecessary since the CBP's final rule precedes the Coast Guard's final rule for the submission of notices of arrival. Two aspects where our rule differs from the CBP's final rule are the Coast Guard NOA requirement (1) for foreign-flag commercial vessels less than 300 gross tons transiting two different COTP zones and (2) vessels carrying CDC. Vessels in the second category above will have to submit an NOA for nearly all transits. In addition, each COTP will have the discretion to grant waivers for these vessels under 33 CFR 160.214. The Coast Guard has established an exception for certain ferries that transit more than one COTP zone and some ferries will continue to qualify for the operating-exclusively-within-a-single-COTP-zone exception.

In drafting this rule, the Coast Guard originally contemplated reducing the threshold for NOADs to 100 gross tons, but we determined that this would have left the Coast Guard without the necessary visibility of these smaller vessels to ensure that we can conduct necessary inspections.

These vessels also pose a unique threat due to their size and can be utilized as weapons, targets, or transports of suspicious persons and/or materials. By capturing vessels down to zero gross tons for notice of arrival, we have ensured that all commercial vessels would be required to submit NOAs if coming from a foreign port or place, and by more closely aligning this requirement with CBP's requirement, we reduce some confusion within the industry. It also allows the Coast Guard to identify and assess a vessel's threat level based on size, cargo, crew, and route.

The Coast Guard also considered carriage of AIS units on passenger vessels that carry more than 12 passengers, a passenger vessel threshold mandated by SOLAS regardless of size or type of voyage. These vessels carry up to 150 passengers (and thus, the threshold of more than 150 passengers does not apply to them) who may be injured or killed in a collision or terrorist attack. However, the domestic population of passenger vessels that carry more than 12 passengers and up to 150 passengers and less than 65 feet in length is estimated to be 4,450 vessels, which are predominantly owned by small entities. We estimate the cost for the carriage (including installation and operation and maintenance costs) of AIS units (assuming Class A units) on this population of vessels to be between $36.0 and $42.4 million at 7- and 3-percent discount rates, respectively. This would have been a relatively large cost burden for small entities that operate these vessels with very few marginal benefits; therefore, the Coast Guard rejected this passenger vessel threshold for AIS carriage.

The AIS portion of this final rule is based on a statutory directive for the carriage of AIS devices onboard commercial vessels of a certain size or type; some of these vessels are expressly identified in 46 U.S.C. 70114(a)(1)(A) and (C), and others are identified based on a decision by the Secretary as called for in 46 U.S.C. 70114(a)(1)(B) and (D). See Table 9 that follows for the source of authority for each § 164.46 applicability paragraph, including those based on a SOLAS requirement. Based on public comments that the rulemaking is too costly for smaller vessel owners and operators and our assessment of alternatives to requirements we proposed, the Coast Guard has set its passenger threshold to vessels certificated to carry more than 150 passengers—up from our proposed threshold of 50 or more passengers—and will also allow certain vessel owners and operators to install the less costly Class B AIS unit, which should alleviate some of the cost burden on smaller vessel owners and operators. See the Regulatory Analysis in the docket for further details.

TABLE 9—NATURE OF AUTHORITY TO REQUIRE INSTALLATION AND USE OF AUTOMATIC IDENTIFICATION SYSTEM (AIS)

33 CFR 164.46	Text of final rule	Expressly required by statute	Expressly required by international convention	Based on discretion exercised by Coast Guard
(b)(1)	AIS Class A device. The following vessels must have on board a properly installed, operational Coast Guard type-approved AIS Class A device:			
(b)(1)(i)	A self-propelled vessel of 65 feet or more in length, engaged in commercial service.	46 U.S.C. 70114(a)(1)(A) ("A self-propelled commercial vessel of at least 65 feet overall in length.").		
(b)(1)(ii)	A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial towing.	46 U.S.C. 70114(a)(1)(C) ("A towing vessel of more than 26 feet overall in length and 600 horsepower.").		
(b)(1)(iii)	A vessel that is certificated to carry more than 150 passengers.	46 U.S.C. 70114(a)(1)(B) ("A vessel carrying more than a number of passengers for hire determined by the Secretary.").	.....	46 U.S.C. 70114(a)(1)(D) ("Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel.").

TABLE 9—NATURE OF AUTHORITY TO REQUIRE INSTALLATION AND USE OF AUTOMATIC IDENTIFICATION SYSTEM (AIS)—Continued

33 CFR 164.46	Text of final rule	Expressly required by statute	Expressly required by international convention	Based on discretion exercised by Coast Guard
(b)(1)(iv)	A self-propelled vessel engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels.	.....	.....	46 U.S.C. 70114(a)(1)(D).
(b)(1)(v)	A self-propelled vessel engaged in the movement of— (A) Certain dangerous cargo as defined in subpart C of part 160 of this chapter, or (B) Flammable or combustible liquid cargo in bulk that is listed in 46 CFR 30.25–1, Table 30.25–1.	.....	.....	46 U.S.C. 70114(a)(1)(D).
(b)(2)(i)	(2) AIS Class B device. Use of a U.S. Coast Guard type-approved AIS Class B device in lieu of an AIS Class A device is permissible on the following vessels if they are not subject to pilotage by other than the vessel Master or crew: (i) Fishing industry vessels;	.....	.....	46 U.S.C. 70114(b) (''The Secretary shall prescribe regulations implementing subsection (a), including requirements for the operation and maintenance of the automatic identification systems required under subsection (a).'').
(b)(2)(ii)	(ii) Vessels identified in paragraph (b)(1)(i) of this section that are certificated to carry less than 150 passengers, and that— (A) Do not operate in a VTS or VMRS area defined in Table 161.12(c) of § 161.12 of this chapter, and (B) Do not operate at speeds in excess of 14 knots; and	.....	.....	46 U.S.C. 70114(b).
(b)(2)(iii)	(iii) Vessels identified in paragraph (b)(1)(iv) of this section engaged in dredging operations.	.....	.....	46 U.S.C. 70114(b).
(c)	(c) SOLAS provisions. The following self-propelled vessels must comply with International Convention for Safety of Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6 (Positioning System), 19.2.4 (AIS Class A), and 19.2.3.5 (Transmitting Heading Device) or 19.2.5.1 (Gyro Compass) as applicable (Incorporated by reference, see § 164.03):	.....	SOLAS Art. I, SOLAS, 32 U.S.T. 47, and the Protocol of 1978 relating to SOLAS, 32 U.S.T. 5577.	
(c)(1)	(1) A vessel of 300 gross tonnage or more, on an international voyage.	.....	Same as above, and SOLAS Chapter V, regulation 19.2.4, that requires all ships of 300 gross tonnage and upwards engaged on international voyages to be fitted with AIS.	

TABLE 9—NATURE OF AUTHORITY TO REQUIRE INSTALLATION AND USE OF AUTOMATIC IDENTIFICATION SYSTEM (AIS)—Continued

33 CFR 164.46	Text of final rule	Expressly required by statute	Expressly required by international convention	Based on discretion exercised by Coast Guard
(c)(2)	(2) A vessel of 150 gross tonnage or more, when carrying more than 12 passengers on an international voyage.	.....	Same as above with addition of SOLAS V, regulation 1.4, which gives the United States discretion in implementing these AIS requirements for ships less than 150 gross tonnage.	

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the final rule so that they could better evaluate its effects on them and participate in the rulemaking. If you think that this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning these provisions or options for compliance, please consult with the Coast Guard personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule. We will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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).

D. Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule relates to two existing OMB-approved collections of information, 1625–0100 and 1625–0112. Details are provided below.

The summary of revised 1625–0100 collection follows:

Title: Advance Notice of Vessel Arrival.

OMB Control Number: 1625–0100.

Summary Of The Collection Of Information: We require arrival notices from certain vessels bound for a port or place in the United States. This rule revises the applicability of vessels required to submit an NOA, adds three new data elements that will be required by 33 CFR part 160, and removes 1 data element with no impact on burden.

Need For Information: To strengthen port safety and security and to ensure the uninterrupted flow of commerce. To this end, we must modify our NOA regulations.

Proposed Use Of Information: This information is required to control vessel traffic, develop contingency plans, and enforce regulations.

Description Of The Respondents: Respondents are the owner, agent, Master, operator, or person in charge of a vessel that arrives at or departs from a port or place in the United States.

Number Of Respondents: The existing OMB-approved number of respondents is 31,594. This rule will decrease that number by 13,217. The total number of respondents will be 18,377. We attribute this decrease in the number of respondents to our improved analysis of the number of vessels impacted by this rulemaking.

Frequency Of Response: The existing OMB-approved number of responses is 170,866, not including 150 waivers. This rule will decrease that number by 63,261. The total number of responses will be 107,605 (not including waivers).

Burden Of Response: The existing OMB-approved burden of response is approximately 30 minutes per response plus an additional 2 minutes for the three new data fields that are new to industry: Maritime Mobile Service Identity (MMSI), whether a vessel is 300 GT or less, and whether the vessel's voyage time is less than 24 hours.

Estimate Of Total Annual Burden: The existing OMB-approved total annual burden is 163,994 hours (ICR Ref. No. 201012–1625–002), not including 150 waivers. This rule will increase that number by 4,168 hours. The estimated total annual burden will be 168,312 hours (not including waivers).

As required by 44 U.S.C. 3507(d), we submitted a copy of the final rule to OMB for its review of the collection of information. OMB has not yet completed its review of this collection. Therefore, we are not making §§ 160.204(a)(5)(vii), 160.205 and 160.208 effective until our information collection request is approved by OMB. We will publish a document in the **Federal Register** informing the public of OMB's decision to approve, modify, or disapprove the collection.

The summary of revised 1625–0112 collection follows:

Title: Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data.

OMB Control Number: 1625–0112.

Summary of the Collection of Information: We plan to collect, store, share, and analyze data transmitted by AIS to enhance MDA. Awareness and threat knowledge are critical for securing and maintaining safety in the maritime domain and the key to preventing adverse events. Domain awareness enables the early identification of potential threats and enhances appropriate responses, including interdiction at an optimal distance with capable prevention forces and increases the timeliness and effectiveness of response to an incident.

Need for Information: To ensure maritime safety and security and to ensure the effective movement of commerce.

Proposed Use of Information: This information collection, storage, and analysis would greatly expand the breadth and depth of our MDA. This enhanced MDA would enable quicker, more efficient responses to marine casualties and improve our ability to

prevent and respond to potential terrorist threats. It would also contribute an essential aspect to our COP, which is our system for sharing operational data among those who need it to perform their missions.

Description of the Respondents: Respondents are the operators or persons in charge of vessels that carry AIS. The MTSA requires the following vessels to carry AIS:

- A self-propelled commercial vessel of at least 65-feet in overall length.
- A towing vessel of more than 26 feet overall in length and 600 horsepower.
- Vessels carrying more than a number of passengers for hire determined by the Secretary.
- Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel. In addition to vessels subject to the MTSA, we estimate an additional 10 percent of voluntary compliance with this rule and information collection.

Number of Respondents: The existing OMB-approved number of respondents is 613—LRIT system users. The AIS portion of this rule will increase that number by 8,922 (about 5,848 U.S.-flag vessels and 74 foreign-flag vessels estimated for this rule including about 3,000 existing AIS users). The total number of respondents is estimated to be 9,535 including 613 respondents from LRIT.

Frequency of Response: The existing OMB-approved number of responses is 613. This final rule will increase that number by 534,557 (533,574 for U.S.-flag vessels and 370 for foreign-flag vessels) for a total of 534,944 responses including 613 responses from LRIT annually.

Burden of Response: The existing OMB-approved burden of response is approximately 20 minutes per response. We retain this estimate to initialize the unit plus about five minutes per voyage to enter the information for Class A users.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 204 hours (ICR Ref. No. 201009–1625–012). This rule will increase that number by 46,986 hours annually for a total of 47,190 hours. The hour burden is a function of the 20 minutes dedicated to the initial encoding of the AIS device with the vessel's static data (MMSI, IMO number, name, call sign, type, and dimension) and approximately 5 minute per voyage to update the vessel's dynamic data (status, destination, estimated time of arrival, and, static draft), which is based on the number of vessels subject to Class A AIS carriage performing an average 164 voyages per year for U.S.-flag vessels.

As required by 44 U.S.C. 3507(d), we submitted a copy of the final rule to OMB for its review of the collection of information. OMB has not yet completed its review of this collection. Therefore, we are not making § 164.46(b) and (c) effective until its information collection request is approved by OMB. We will publish a document in the **Federal Register** informing the public of OMB's decision to approve, modify, or disapprove the collection.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, or 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 final rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis is explained below.

To the extent States have a current requirement in effect for notices of vessel arrivals to a State agency—for example, notices to pilot authorities for pilot services—we do not intend to preempt those requirements with this final rule. However, we reserve our position with respect to preemption of any prospective new State rule or legal requirement for a notice of arrival or submission of information requirements that are similar to those set forth in this final rule. The U.S. Supreme Court in *United States* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000), held that pursuant to title I of the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221–1232), the authority for the NOA portion of this final rule, we can preempt conflicting or similar State requirements on vessel operation. Accordingly, based on the Supreme Court's holding in the *Locke* case, we believe that any prospective State requirement for an NOA or information gathering requirement directed at vessel owners or operators that is similar to that contained in this final rule is inconsistent with the Federalism principles enunciated in that case and is preempted.

Regarding the AIS portion of this final rule, it is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. Our AIS carriage requirements fall into the category of equipping of vessels which, based on the principles in *Locke,* are within a field foreclosed from regulation by States. In addition, under the authority of Title I of the PWSA (specifically 33 U.S.C. 1223) and the MTSA, this final rule will preempt any State action on the subject of AIS carriage requirements. *See Locke.*

In light of the analyses above, this final rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

F. 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 1 year. Though this final rule will not result in such an expenditure, we discuss the effects of this final rule elsewhere in this preamble.

G. Taking of Private Property

This final 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.

H. Civil Justice Reform

This final 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.

I. Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final 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.

J. Indian Tribal Governments

This final 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.

K. Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order. Though it is a ''significant regulatory action'' under Executive Order 12866, this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, this final rule does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule uses the following voluntary consensus standards:

- IMO Resolution A.917(22), Guidelines for the Onboard Operational Use of Shipborne Automatic Identification System (AIS), adopted November 29, 2001
- IMO SN/Circ 227, Guidelines for the Installation of a Shipborne Automatic Identification System (AIS), dated January 6, 2003
- IMO SN/Circ 244, Guidance on the Use of the UN/LOCODE in the Destination Field in AIS Messages, dated December 15, 2004
- IMO SN/Circ 245, Amendments to the Guidelines for the Installation of a Shipborne Automatic Identification System (AIS) (SN/Circ.227), dated December 15, 2004
- IMO SN.1/Circ 289, Guidelines on the Use of AIS Application-specific Messages, dated June 2, 2010
- National Marine Electronics Association (NMEA) 0400, Installation Standard for Marine Electronic Equipment used on Moderate-Sized Vessels, Version 3.10, dated February 2012

The section that references these standards and the locations where these standards are available are listed in § 164.03.

M. Environment

We have analyzed this final rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide us in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a), (d), (e), and (i) of the Instruction and under section 6.a. of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48243, 48245, July 23, 2002). This rule involves regulations concerning reporting procedures, equipping of vessels, equipment carriage requirements, aid of navigation, and vessel operation safety standards. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 62

Navigation (water).

33 CFR Part 66

Intergovernmental relations, Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 117

Bridges.

33 CFR Part 118

Bridges.

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 164

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

33 CFR Part 165

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

46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 148

Cargo vessels, Hazardous materials transportation, Marine safety.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 62, 66, 101, 110, 117, 118, 151, 160, 161, 164, and 165, and 46 CFR parts 4 and 148, as follows:

Title 33—Navigation and Navigable Waters

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

■ 1. The authority citation for part 62 is revised to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1222, 1233; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 62.52 to read as follows:

§ 62.52 Automatic Identification System Aids to Navigation (AIS AtoN).

(a) Aids to Navigation (AtoN) may be enhanced by the use of an automatic identification system (AIS). AIS is a

maritime navigation safety communications protocol standardized by the International Telecommunication Union and adopted by the International Maritime Organization for the broadcast or exchange of navigation information between vessels, aircraft, and shore stations. AIS AtoN can autonomously and at fixed intervals broadcast the name, position, dimensions, type, characteristics and status from or concerning an aid to navigation.

(b) AIS AtoN can be either real (physically fitted to the AtoN), synthetic (physically fitted somewhere other than to the AtoN) or virtual (physically nonexistent, but capable of being portrayed on AIS-capable displays).

(c) AIS AtoN can also be used to broadcast both laterally (*e.g.,* Port Hand Mark) and non-laterally significant marine safety information (*e.g.,* environmental data, tidal information, and navigation warnings).

PART 66—PRIVATE AIDS TO NAVIGATION

■ 3. The authority citation for part 66 continues to read as follows:

Authority: 14 U.S.C. 83, 84, 85; 43 U.S.C. 1333; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1.

§ 66.01–1 [Amended]

■ 4. In § 66.01–1, remove paragraph (d).

■ 5. Revise § 66.01–5(i) to read as follows:

§ 66.01–5 Application procedure.

* * * * *

(i) For AIS AtoN and racons: Manufacturer and model number of AIS AtoN and racon, position and height above water of desired installation, and requested MORSE coding or AIS AtoN message characteristics. Equipment must have FCC authorization.

PART 101—MARITIME SECURITY: GENERAL

■ 6. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 101.105 [Amended]

■ 7. In § 101.105, in the definition of Certain Dangerous Cargo, remove the section reference ''160.204'' and add, in its place, the section reference ''160.202''.

PART 110—ANCHORAGE REGULATIONS

■ 8. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

§ 110.158 [Amended]

■ 9. In § 110.158(b), remove the words ''Sec. 160.203 of this title'' and add, in their place, the words ''§ 160.202 of this chapter''.

§ 110.168 [Amended]

■ 10. In § 110.168(b), in the definition of Dangerous cargo, remove the section reference ''§ 160.204 of this title'' and add, in its place, the section reference ''§ 160.202 of this chapter''.

§ 110.214 [Amended]

■ 11. In § 110.214(a)(2)(ii) and (d)(1), remove the section reference '' § 160.203'' and add, in its place, the section reference ''§ 160.202''.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 12. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

§ 117.1007 [Amended]

■ 13. In § 117.1007(b)(2), remove the section reference ''160.204'' and add, in its place, the section reference ''160.202''.

PART 118—BRIDGE LIGHTING AND OTHER SIGNALS

■ 14. The authority citation for part 118 continues to read as follows:

Authority: 33 U.S.C. 494; 14 U.S.C. 85, 633; Department of Homeland Security Delegation No. 0170.1.

■ 15. In § 118.120, add a new sentence at the end of the section to read as follows:

§ 118.120 Radar reflectors and racons.

* * * The District Commander may authorize the use of Automatic Identification System Aids to Navigation in lieu of or in addition to a racon.

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 16. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063), § 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2(77).

§ 151.2005 [Amended]

■ 17. In § 151.2005(a), remove the reference ''160.204'' and add, in its place, the reference ''160.202''.

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

■ 18. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

Subpart C—Notification of Arrival, Hazardous Conditions, and Certain Dangerous Cargoes

■ 19. Revise the heading to subpart C to read as shown above.

■ 20. Revise § 160.201 to read as follows:

§ 160.201 General.

This subpart contains requirements and procedures for submitting a notice of arrival (NOA), and a notice of hazardous condition. The sections in this subpart describe:

(a) Applicability and exemptions from requirements in this subpart;

(b) Required information in an NOA;

(c) Required updates to an NOA;

(d) Methods and times for submission of an NOA, and updates to an NOA;

(e) How to obtain a waiver; and

(f) Requirements for submission of the notice of hazardous condition.

Note to § 160.201. For notice-of-arrival requirements for the U.S. Outer Continental Shelf, see 33 CFR part 146.

§ 160.203 [Amended]

■ 21. Lift the suspension of § 160.203(d) and (e).

160.202, 160.203, and 160.204 [Redesignated as 160.203, 160.204 and 160.205]

■ 22. Redesignate §§ 160.202, 160.203, and 160.204, as §§ 160.203, 160.204, and 160.202, respectively.

■ 23. In redesignated § 160.202, revise the introductory text, and add definitions, in alphabetical order, for ''boundary waters'', ''embark'', ''ferry schedule'', ''foreign vessel'', and ''operating exclusively within a single Captain of the Port zone'', to read as follows:

§ 160.202 Definitions.

Terms in this subpart that are not defined in this section or in § 160.3 have

the same meaning as those terms in 46 U.S.C. 2101. As used in this subpart—

* * * * *

Boundary waters mean the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

* * * * *

Embark means when a crewmember or a person in addition to the crew joins the vessel.

Ferry schedule means a published document that:

(1) Identifies locations a ferry travels to and from;

(2) Lists the times of departures and arrivals; and

(3) Identifies the portion of the year in which the ferry maintains this schedule.

Foreign vessel means a vessel of foreign registry or operated under the authority of a country except the United States.

* * * * *

Operating exclusively within a single Captain of the Port zone refers to vessel movements within the boundaries of a single COTP zone, *e.g.,* from one dock to another, one berth to another, one anchorage to another, or any combination of such transits. Once a vessel has arrived in a port in a COPT zone, it would not be considered as departing from a port or place simply because of its movements within that specific port.

* * * * *

■ 24. In redesignated § 160.203, remove paragraph (b); redesignate paragraphs (c) and (d) as paragraphs (b) and (c), respectively; and revise paragraph (a) to read as follows:

§ 160.203 Applicability.

(a) This subpart applies to the following vessels that are bound for or departing from ports or places within the navigable waters of the United States, as defined in 33 CFR 2.36(a), which includes internal waters and the territorial seas of the United States, and any deepwater port as defined in 33 CFR 148.5:

(1) U.S. vessels in commercial service, and

(2) All foreign vessels.

* * * * *

■ 25. In redesignated § 160.204—

■ a. Revise the section heading;

■ b. Revise paragraph (a);

■ c. From April 30, 2015 through December 31, 2015, add temporary paragraph (a)(6) to read as set out below; and

■ d. Revise paragraphs (b) through (c) to read as set out below; and

■ e. Remove paragraphs (d) through (f).

§ 160.204 Exemptions and exceptions.

(a) Except for reporting notice of hazardous conditions, the following vessels are exempt from requirements in this subpart:

(1) A passenger or offshore supply vessel when employed in the exploration for or in the removal of oil, gas, or mineral resources on the continental shelf.

(2) An oil spill response vessel (OSRV) when engaged in actual spill response operations or during spill response exercises.

(3) After December 31, 2015, a vessel required by 33 CFR 165.830 or 165.921 to report its movements, its cargo, or the cargo in barges it is towing.

(4) A United States or Canadian vessel engaged in the salving operations of any property wrecked, or rendering aid and assistance to any vessels wrecked, disabled, or in distress, in waters specified in Article II of the 1908 Treaty of Extradition, Wrecking and Salvage (35 Stat. 2035; Treaty Series 502).

(5) The following vessels neither carrying certain dangerous cargo nor controlling another vessel carrying certain dangerous cargo:

(i) A foreign vessel 300 gross tons or less not engaged in commercial service.

(ii) A vessel operating exclusively within a single Captain of the Port zone. Captain of the Port zones are defined in 33 CFR part 3.

(iii) A U.S. towing vessel and a U.S. barge operating solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia.

(iv) A public vessel.

(v) Except for a tank vessel, a U.S. vessel operating solely between ports or places of the United States on the Great Lakes.

(vi) A U.S. vessel 300 gross tons or less, engaged in commercial service not coming from a foreign port or place.

(vii) Each ferry on a fixed route that is described in an accurate schedule that is submitted by the ferry operator, along with information in paragraphs (a)(5)(vii)(A) through (J) of this section, to the Captain of the Port for each port or place of destination listed in the schedule at least 24 hours in advance of the first date and time of arrival listed on the schedule. At least 24 hours before the first date and time of arrival listed on the ferry schedule, each ferry operator who submits a schedule under paragraph (a)(5)(vii) of this section must also provide the following information to the Captain of the Port for each port or place of destination listed in the schedule for the ferry, and if the schedule or the following submitted information changes, the ferry operator must submit an updated schedule at least 24 hours in advance of the first date and time of arrival listed on the new schedule and updates on the following items whenever the submitted information is no longer accurate:

(A) Name of the vessel;

(B) Country of registry of the vessel;

(C) Call sign of the vessel;

(D) International Maritime Organization (IMO) international number or, if the vessel does not have an assigned IMO international number, the official number of the vessel;

(E) Name of the registered owner of the vessel;

(F) Name of the operator of the vessel;

(G) Name of the vessel's classification society or recognized organization, if applicable;

(H) Each port or place of destination;

(I) Estimated dates and times of arrivals at and departures from these ports or places; and

(J) Name and telephone number of a 24-hour point of contact.

(6) From April 30, 2015 through December 31, 2015, vessels identified as being subject to 33 CFR 165.830 or 165.921.

(b) A vessel less than 500 gross tons is not required to submit the International Safety Management (ISM) Code Notice (Entry 7 in Table 160.206 of § 160.206).

(c) A U.S. vessel is not required to submit the International Ship and Port Facility Security (ISPS) Code Notice information (Entry 8 in Table 160.206 of § 160.206).

■ 26. Add § 160.205 to read as follow:

§ 160.205 Notices of arrival.

The owner, agent, Master, operator, or person in charge of a vessel must submit notices of arrival consistent with the requirements in this subpart.

■ 27. In § 160.206, lift the suspension of item (8) in Table 160.206 of paragraph (a), and revise § 160.206 to read as follows:

§ 160.206 Information required in an NOA.

(a) Information required. With the exceptions noted in paragraph (b) of this section, each NOA must contain all of the information items specified in Table 160.206. Vessel owners and operators should protect any personal information they gather in preparing notices for

transmittal to the National Vessel Movement Center (NVMC) to prevent unauthorized disclosure of that information.

TABLE 160.206—NOA INFORMATION ITEMS

Required information	Vessels neither carrying CDC nor controlling another vessel carrying CDC	Vessels carrying CDC or controlling another vessel carrying CDC
(1) *Vessel Information:*		
(i) Name;	X	X
(ii) Name of the registered owner;	X	X
(iii) Country of registry;	X	X
(iv) Call sign;	X	X
(v) International Maritime Organization (IMO) international number or, if vessel does not have an assigned IMO international number, substitute with official number;	X	X
(vi) Name of the operator;	X	X
(vii) Name of charterer;	X	X
(viii) Name of classification society or recognized organization;	X	X
(ix) Maritime Mobile Service Identity (MMSI) number, if applicable;	X	X
(x) Whether the vessel is 300 gross tons or less (yes or no); and	X	X
(xi) USCG Vessel Response Plan Control Number, if applicable.	X	X
(2) *Voyage Information:*		
(i) Names of last five foreign ports or places visited;	X	X
(ii) Dates of arrival and departure for last five foreign ports or places visited;	X	X
(iii) For the port or place of the United States to be visited, list the name of the receiving facility, the port or place, the city, and the state;	X	X
(iv) For the port or place of the United States to be visited, the estimated date and time of arrival;	X	X
(v) For the port or place in the United States to be visited, the estimated date and time of departure;	X	X
(vi) The location (port or place and country) or position (latitude and longitude or waterway and mile marker) of the vessel at the time of reporting;	X	X
(vii) The name and telephone number of a 24-hour point of contact;	X	X
(viii) Whether the vessel's voyage time is less than 24 hours (yes or no);	X	X
(ix) Last port or place of departure; and	X	X
(x) Dates of arrival and departure for last port or place of departure.	X	X
(3) *Cargo Information:*		
(i) A general description of cargo, other than CDC, on board the vessel (e.g., grain, container, oil, etc.);	X	X
(ii) Name of each CDC carried, including cargo UN number, if applicable; and	.....	X
(iii) Amount of each CDC carried.	.....	X
(4) *Information for each Crewmember On Board:*		
(i) Full name;	X	X
(ii) Date of birth;	X	X
(iii) Nationality;	X	X
(iv) Passport * or mariner's document number (type of identification and number);	X	X
(v) Position or duties on the vessel; and	X	X
(vi) Where the crewmember embarked (list port or place and country).	X	X
(5) *Information for each Person On Board in Addition to Crew:*		
(i) Full name;	X	X
(ii) Date of birth;	X	X
(iii) Nationality;	X	X
(iv) Passport number; * and	X	X
(v) Where the person embarked (list port or place and country).	X	X
(6) *Operational condition of equipment required by 33 CFR part 164 of this chapter (see note to table):*	X	X
(7) *International Safety Management (ISM) Code Notice:*		
(i) The date of expiration for the company's Document of Compliance certificate that covers the vessel;	X	X
(ii) The date of expiration for the vessel's Safety Management Certificate; and	X	X
(iii) The name of the Flag Administration, or the recognized organization(s) representing the vessel Flag Administration, that issued those certificates.	X	X
(8) *International Ship and Port Facility Security Code (ISPS) Notice:*		
(i) The date of issuance for the vessel's International Ship Security Certificate (ISSC), if any;	X	X
(ii) Whether the ISSC, if any, is an initial Interim ISSC, subsequent and consecutive Interim ISSC, or final ISSC;	X	X
(iii) Declaration that the approved ship security plan, if any, is being implemented;	X	X
(iv) If a subsequent and consecutive Interim ISSC, the reasons therefore;	X	X
(v) The name and 24-hour contact information for the Company Security Officer; and	X	X
(vi) The name of the Flag Administration or the recognized security organization(s) representing the vessel Flag Administration that issued the ISSC.	X	X

Note to Table 160.206. For items with an asterisk (*), see paragraph (b) of this section. Submitting a response for item 6 indicating that navigation equipment is not operating properly does not serve as notice to the District Commander, Captain of the Port, or Vessel Traffic Center, under 33 CFR 164.53.

(b) Exceptions. If a crewmember or person on board other than a crewmember is not required to carry a passport for travel, then passport information required in Table 160.206 by items (4)(iv) and (5) (iv) need not be provided for that person.

■ 28. In § 160.208—

■ a. In paragraph (b)(3), remove the reference to ''(5)(v)'', and in its place, add ''(4)(vii)'',

■ b. Revise the section heading and paragraphs (a) and (c) to read as follows:

§ 160.208 Updates to a submitted NOA.

(a) Unless otherwise specified in this section, whenever events cause NOA information submitted for a vessel to become inaccurate, or the submitter to realize that data submitted was inaccurate, the owner, agent, Master, operator, or person in charge of that vessel must submit an update within the times required in § 160.212.

* * * * *

(c) When reporting updates, revise and resubmit the NOA.

■ 29. In § 160.210, lift the suspension of the last sentence of paragraph (b), the last sentence of paragraph (c), and paragraph (d); and revise § 160.210 to read as follows:

§ 160.210 Methods for submitting an NOA.

(a) National Vessel Movement Center (NVMC). Except as otherwise provided in this paragraph or paragraph (b) of this section, vessels must submit NOA information required by § 160.206 to the NVMC using methods currently specified at *www.nvmc.uscg.gov,* which includes submission through the NVMC electronic Notice of Arrival and Departure (eNOAD) World Wide Web site, and XML, which includes the Excel Workbook format. These data may also be submitted using other methods that may be added as future options on *www.nvmc.uscg.gov.* XML spreadsheets may be submitted via email to *enoad@nvmc.uscg.gov.* If a vessel operator must submit an NOA or an update, for a vessel in an area without internet access or when experiencing technical difficulties with an onboard computer, and he or she has no shore-side support available, the vessel operator may fax or phone the submission to the NVMC. Fax at 1–800–547–8724 or 304–264–2684. Workbook available at *www.nvmc.uscg.gov;* or, telephone at 1–800–708–9823 or 304–264–2502.

(b) Saint Lawrence Seaway. Those vessels transiting the Saint Lawrence Seaway inbound, bound for a port or place in the United States, may meet the submission requirements of paragraph (a) of this section by submitting the required information to the Saint Lawrence Seaway Development Corporation and the Saint Lawrence Seaway Management Corporation of Canada using methods specified at *www.nvmc.uscg.gov.*

■ 30. In § 160.212, lift the suspension of paragraph (c), and revise § 160.212 to read as follows:

§ 160.212 When to submit an NOA.

(a) Submission of an NOA. (1) Except as set out in paragraphs (a)(2) and (a)(3) of this section, all vessels must submit NOAs within the times required in paragraph (a)(4) of this section.

(2) Towing vessels, when in control of a vessel carrying CDC and operating solely between ports or places of the contiguous 48 states, Alaska, and the District of Columbia, must submit an NOA before departure but at least 12 hours before arriving at the port or place of destination.

(3) U.S. vessels 300 gross tons or less, arriving from a foreign port or place, and whose voyage time is less than 24 hours must submit an NOA at least 60 minutes before departure from the foreign port or place. Also, Canadian vessels 300 gross tons or less, arriving directly from Canada, via boundary waters, to a United States port or place on the Great Lakes, whose voyage time is less than 24 hours must submit an NOA at least 60 minutes before departure from the Canadian port or place.

(4) Times for submitting NOAs are as follows:

If your voyage time is—	Then you must submit an NOA—
(i) 96 hours or more; or	At least 96 hours before arriving at the port or place of destination; or
(ii) Less than 96 hours	Before departure but at least 24 hours before arriving at the port or place of destination.

(b) Submission of updates to an NOA. (1) Except as set out in paragraphs (b)(2) and (b)(3) of this section, vessels must submit updates in NOA information within the times required in paragraph (b)(4) of this section.

(2) Towing vessels, when in control of a vessel carrying CDC and operating solely between ports or places in the contiguous 48 states, Alaska, and the District of Columbia, must submit updates to an NOA as soon as practicable but at least 6 hours before entering the port or place of destination.

(3) U.S. vessels 300 gross tons or less, arriving from a foreign port or place, whose voyage time is—

(i) Less than 24 hours but greater than 6 hours, must submit updates to an NOA as soon as practicable, but at least 6 hours before entering the port or place of destination.

(ii) Less than or equal to 6 hours, must submit updates to an NOA as soon as practicable, but at least 60 minutes before departure from the foreign port or place.

(4) Times for submitting updates to NOAs are as follows:

If your remaining voyage time is—	Then you must submit updates to an NOA—
(i) 96 hours or more;	As soon as practicable, but at least 24 hours before arriving at the port or place of destination;
(ii) Less than 96 hours but not less than 24 hours; or.	As soon as practicable, but at least 24 hours before arriving at the port or place of destination; or
(iii) Less than 24 hours	As soon as practicable, but at least 12 hours before arriving at the port or place of destination.

§ 160.215 [Redesignated as § 160.216]

■ 31. Redesignate § 160.215 as § 160.216, and add a new § 160.215 to read as follows:

§ 160.215 Force majeure.

When a vessel is bound for a port or place of the United States under force majeure, it must comply with the requirements in this section, but not other sections of this subpart. The vessel must report the following information to the nearest Captain of the Port as soon as practicable:

(a) The vessel Master's intentions;

(b) Any hazardous conditions as defined in § 160.202; and

(c) If the vessel is carrying certain dangerous cargo or controlling a vessel carrying certain dangerous cargo, the amount and name of each CDC carried, including cargo UN number if applicable.

PART 161—VESSEL TRAFFIC MANAGEMENT

■ 32. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70117; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 33. In § 161.2, revise the definition of ''VTS User'' to read as follows:

§ 161.2 Definitions.

* * * * *

VTS User means a vessel or an owner, operator, charterer, Master, or person directing the movement of a vessel within a VTS area that is:

(1) Subject to the Vessel Bridge-to-Bridge Radiotelephone Act;

(2) Required to participate in a VMRS; or

(3) Equipped with a Coast Guard type-approved Automatic Identification System (AIS).

* * * * *

■ 34. In § 161.5, revise paragraph (b) to read as follows:

§ 161.5 Deviations from the rules.

* * * * *

(b) Requests to deviate from any provision in this part due to circumstances that develop during a transit or immediately preceding a transit may be made to the appropriate Vessel Traffic Center (VTC). Requests to deviate must be made as far in advance as practicable. Upon receipt of the request, the VTC may authorize a deviation if it is determined that, based on vessel handling characteristics, traffic density, radar contacts, environmental conditions and other relevant information, such a deviation provides a level of safety equivalent to that provided by the required measure or is a maneuver considered necessary for safe navigation under the circumstances.

§ 161.12 [Amended]

■ 35. In § 161.12, in paragraph (c), remove the words ''§§ 161.21 and 164.46 of this subchapter'' from the last sentence of Note 1 of table 161.12(c), and add, in their place, the words ''§ 161.21''; and in paragraph (d)(5), remove the section reference ''§ 160.204'' and add, in its place, the section reference ''§ 160.202''.

■ 36. In § 161.19, revise paragraph (f) to read as follows:

§ 161.19 Sailing Plan (SP).

* * * * *

(f) Dangerous cargo on board or in its tow, as defined in § 160.202 of this chapter.

PART 164—NAVIGATION SAFETY REGULATIONS

■ 37. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.46 also issued under 46 U.S.C. 70114 and Sec. 102 of Pub. L. 107–295. Sec. 164.61 also issued under 46 U.S.C. 6101.

■ 38. In § 164.02, revise the introductory text of paragraph (a) to read as follows:

§ 164.02 Applicability exception for foreign vessels.

(a) Except for § 164.46(c), none of the requirements of this part apply to foreign vessels that:

* * * * *

■ 39. Revise § 164.03 to read as follows:

§ 164.03 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of the change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202–741–6030, or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* Also, it is available for inspection at the Commandant (CG–NAV), U.S. Coast Guard Stop 7418, Attn: Office of Navigation Systems, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593–7418, and is available from the sources listed below.

(b) American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005–4070, 202–682–8000, *www.api.org:*

(1) API Specification 9A, Specification for Wire Rope, Section 3, Properties and Tests for Wire and Wire Rope, May 28, 1984, IBR approved for § 164.74.

(2) [Reserved]

(c) ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, 610–832–9585, *www.astm.org:*

(1) ASTM D4268–93, Standard Test Method for Testing Fiber Rope, IBR approved for § 164.74.

(2) [Reserved]

(d) Cordage Institute, 350 Lincoln Street, Hingham, MA 02043.

(1) CIA–3, Standard Test Methods for Fiber Rope Including Standard Terminations, Revised, June 1980, IBR approved for § 164.74.

(2) [Reserved]

(e) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom, *www.imo.org:*

(1) IMO Resolution A342(IX), Recommendation on Performance Standards for Automatic Pilots, November 12, 1975, IBR approved for § 164.13.

(2) IMO Resolution A.917(22), Guidelines for the Onboard Operational Use of Shipborne Automatic Identification System (AIS), January 25, 2002, IBR approved for § 164.46.

(3) Resolution MSC.74(69), Annex 3, Recommendation on Performance Standards for a Universal Shipborne Automatic Identification System (AIS), May 12, 1998, IBR approved for § 164.46.

(4) SN/Circ.227, Guidelines for the Installation of a Shipborne Automatic Identification System (AIS), January 6, 2003, IBR approved for § 164.46.

(5) SN/Circ.244, Guidance on the Use of the UN/LOCODE in the Destination Field in AIS Messages, December 15, 2004, IBR approved for § 164.46.

(6) SN/Circ.245, Amendments to the Guidelines for the Installation of a Shipborne Automatic Identification System (AIS)(SN/Circ.227), December 15, 2004, IBR approved for § 164.46.

(7) SOLAS, International Convention for the Safety of Life at Sea, 1974, and 1988 Protocol relating thereto, 2000 Amendments, effective January and July 2002, (SOLAS 2000 Amendments), IBR approved for § 164.46.

(8) Conference resolution 1, Adoption of amendments to the Annex to the International Convention for the Safety of Life at Sea, 1974, and amendments to Chapter V of SOLAS 1974, adopted on December 12, 2002, IBR approved for § 164.46.

(9) SN.1/Circ.289, Guidance on the Use of AIS Application-Specific Messages, June 2, 2010, IBR approved for § 164.46.

(f) National Marine Electronics Association (NMEA), 7 Riggs Avenue, Severna Park, MD 21146, 800–808–6632, *www.nmea.org:*

(1) NMEA 0400, Installation Standard for Marine Electronic Equipment used on Moderate-Sized Vessels, Version 3.10, February 2012, IBR approved for § 164.46.

(2) [Reserved]

(g) Radio Technical Commission for Maritime Services *(RTCM),* 1611 N. Kent St., Suite 605, Arlington, VA 22209, 703–527–2000, *www.rtcm.org:*

(1) RTCM Paper 12–78/DO–100, Minimum Performance Standards, Loran C Receiving Equipment, 1977, IBR approved for § 164.41.

(2) RTCM Paper 71–95/SC112–STD, RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, Version 1.1, October 10, 1995, IBR approved for § 164.72.

(3) RTCM Paper 191–93/SC112–X, RTCM Recommended Standards for Maritime Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.2, December 20, 1993, IBR approved for § 164.72.

§ 164.43 [Removed]

■ 40. Remove § 164.43.

■ 41. Revise § 164.46 to read as follows:

§ 164.46 Automatic Identification System.

(a) *Definitions.* As used in this section—Automatic Identification Systems or AIS means a maritime navigation safety communications system standardized by the International Telecommunication Union (ITU), adopted by the International Maritime Organization (IMO), that—

(1) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft;

(2) Receives automatically such information from similarly fitted ships, monitors and tracks ships; and

(3) Exchanges data with shore-based facilities.

Gross tonnage means tonnage as defined under the International Convention on Tonnage Measurement of Ships, 1969.

International voyage means a voyage from a country to which the present International Convention for the Safety of Life at Sea applies to a port outside such country, or conversely.

Properly installed, operational means an Automatic Identification System (AIS) that is installed and operated using the guidelines set forth by the International Maritime Organization (IMO) Resolution A.917(22) and Safety of Navigation Circulars (SN/Circ.) 227, 244, 245, and SN.1/Circ.289; or National Marine Electronics Association (NMEA) Installation Standard 0400–3.10 in lieu of SN/Circ.227 and 245 (incorporated by reference, see § 164.03).

(b) *AIS carriage*—(1) *AIS Class A device.* The following vessels must have on board a properly installed, operational Coast Guard type-approved AIS Class A device:

(i) A self-propelled vessel of 65 feet or more in length, engaged in commercial service.

(ii) A towing vessel of 26 feet or more in length and more than 600 horsepower, engaged in commercial service.

(iii) A vessel that is certificated to carry more than 150 passengers.

(iv) A self-propelled vessel engaged in dredging operations in or near a commercial channel or shipping fairway in a manner likely to restrict or affect navigation of other vessels.

(v) A self-propelled vessel engaged in the movement of—

(A) Certain dangerous cargo as defined in subpart C of part 160 of this chapter, or

(B) Flammable or combustible liquid cargo in bulk that is listed in 46 CFR 30.25–1, Table 30.25–1.

(2) *AIS Class B device.* Use of a Coast Guard type-approved AIS Class B device in lieu of an AIS Class A device is permissible on the following vessels if they are not subject to pilotage by other than the vessel Master or crew:

(i) Fishing industry vessels;

(ii) Vessels identified in paragraph (b)(1)(i) of this section that are certificated to carry less than 150 passengers and that—

(A) Do not operate in a Vessel Traffic Service (VTS) or Vessel Movement Reporting System (VMRS) area defined in Table 161.12(c) of § 161.12 of this chapter, and

(B) Do not operate at speeds in excess of 14 knots; and

(iii) Vessels identified in paragraph (b)(1)(iv) of this section engaged in dredging operations.

Note to paragraph (b): Under 33 U.S.C. 1223(b)(3) and 33 CFR 160.111, a Coast Guard Captain of the Port (COTP) may restrict the operation of a vessel if he or she determines that by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, the restriction is justified in the interest of safety. In certain circumstances, if a COTP is concerned that the operation of a vessel not subject to § 164.46 would be unsafe, the COTP may determine that voluntary installation of AIS by the operator would mitigate that concern.

(c) *SOLAS provisions.* The following self-propelled vessels must comply with International Convention for Safety of Life at Sea (SOLAS), as amended, Chapter V, regulation 19.2.1.6 (Positioning System), 19.2.4 (AIS Class A), and 19.2.3.5 (Transmitting Heading Device) or 19.2.5.1 (Gyro Compass) as applicable (Incorporated by reference, see § 164.03):

(1) A vessel of 300 gross tonnage or more, on an international voyage.

(2) A vessel of 150 gross tonnage or more, when carrying more than 12 passengers on an international voyage.

(d) Operations. The requirements in this paragraph are applicable to any vessel equipped with AIS.

(1) Use of AIS does not relieve the vessel of the requirements to sound whistle signals or display lights or shapes in accordance with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), 28 U.S.T. 3459, T.I.A.S. 8587, or Inland Navigation Rules, 33 CFR part 83; nor of the radio requirements of the Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. 1201–1208, part 26 of this chapter, and 47 CFR part 80.

(2) AIS must be maintained in effective operating condition, which includes—

(i) The ability to reinitialize the AIS, which requires access to and knowledge of the AIS power source and password;

(ii) The ability to access AIS information from the primary conning position of the vessel;

(iii) The accurate broadcast of a properly assigned Maritime Mobile Service Identity (MMSI) number;

(iv) The accurate input and upkeep of all AIS data fields and system updates; and

(v) For those vessels denoted in paragraph (b) of this section, the continual operation of AIS and its associated devices (*e.g.,* positioning system, gyro, converters, displays) at all times while the vessel is underway or at anchor, and, if moored, at least 15 minutes prior to getting underway; except when its operation would compromise the safety or security of the vessel or a security incident is imminent. The AIS should be returned to continuous operation as soon as the compromise has been mitigated or the security incident has passed. The time and reason for the silent period should be recorded in the ship's official log and reported to the nearest Captain of the Port or Vessel Traffic Center (VTC).

(3) AIS safety-related text messaging must be conducted in English and solely to exchange or communicate pertinent navigation safety information (analogous to a SECURITE broadcast). Although not prohibited, AIS text messaging should not be relied upon as the primary means for broadcasting

distress (MAYDAY) or urgent (PAN PAN) communications. (47 CFR 80.1109, Distress, urgency, and safety communications).

(4) AIS application-specific messaging (ASM) is permissible, but is limited to applications adopted by the International Maritime Organization (such as IMO SN.1/Circ.289) or those denoted in the International Association of Marine Aids to Navigation and Lighthouse Authorities' (IALA) ASM Collection for use in the United States or Canada, and to no more than one ASM per minute.

Note to paragraph (d): The Coast Guard has developed the ''U.S. AIS Encoding Guide'' to help ensure consistent and accurate data encoding (input) by AIS users. This Guide is available at our ''AIS Frequently Asked Questions'' (FAQ #2) World Wide Web page at *www.navcen.uscg.gov.* Although of great benefit, the interfacing or installation of other external devices or displays (*e.g.,* transmitting heading device, gyro, rate of turn indicator, electronic charting systems, and radar), is not currently required except as denoted in § 164.46(c). Most application-specific messages require interfacing to an external system that is capable of their portrayal, such as equipment certified to meet Radio Technical Commission for Maritime Services (RTCM) electronic chart system (ECS) standard 10900 series.

(e) Watchkeeping. AIS is primarily intended for use by the Master or person in charge of the vessel, or by the person designated by the Master or person in charge to pilot or direct the movement of the vessel, who must maintain a periodic watch for AIS information.

(f) Portable AIS. The use of a portable AIS is permissible only to the extent that electromagnetic interference does not affect the proper function of existing navigation and communication equipment on board and such that only one AIS device may be transmitting on board a vessel at any one time.

(g) AIS Pilot Plug. The AIS Pilot Plug on any vessel subject to pilotage by other than the vessel Master or crew must be readily available and easily accessible from the primary conning position of the vessel and permanently affixed (not an extension cord) and adjacent (within 3 feet) to a 120-volt 50/60 Hz AC power receptacle (NEMA 5–15).

(h) Exceptions. The following vessels may seek up to a 5-year deviation from the AIS requirements of this section by requesting a deviation under § 164.55.

(1) Vessels that operate solely within a very confined area (*e.g.,* less than a 1 nautical-mile radius, shipyard, or barge fleeting facility);

(2) Vessels that conduct only short voyages (less than 1 nautical mile) on a fixed schedule (*e.g.,* a bank-to-bank river ferry service or a tender vessel);

(3) Vessels that are not likely to encounter other AIS-equipped vessels;

(4) Vessels whose design or construction makes it impracticable to operate an AIS device (*e.g.,* those that lack electrical power, have an exposed or open cabin, or are submersible); or

(5) Vessels denoted in paragraph (b)(2) that seek a deviation from requirements in paragraphs (d)(2)(ii) and (e) of this section because their AIS Class B device lacks a display.

(i) Prohibition. Except for maritime support stations (see 47 CFR 80.5) licensed by the Federal Communications Commission (FCC), broadcasts from AIS Class A or B devices on aircraft, non-self propelled vessels or from land are prohibited.

(j) Implementation date. Those vessels identified in paragraphs (b) and (c) of this section that were not previously subject to AIS carriage must install AIS no later than March 1, 2016.

§ 164.53 [Amended]

■ 42. In § 164.53(b), after the word ''vessel's'', add the phrase ''automatic identification system (AIS),''.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 43. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

§ 165.503 [Amended]

■ 44. In § 165.503(a), in the definition of *Certain dangerous cargo or CDC,* remove the section reference ''160.204'' and add, in its place, the section reference ''160.202''.

§ 165.510 [Amended]

■ 45. In § 165.510(b), in the definition of *Dangerous Cargo,* remove the section reference ''§ 160.203'' and add, in its place, the section reference ''§ 160.202''.

§ 165.753 [Amended]

■ 46. In § 165.753(c)(6), remove the reference ''160.203'' and add, in its place, the reference ''160.202''.

§ 165.811 [Amended]

■ 47. In § 165.811(e)(2), remove the section reference ''§ 160.203'' and add, in its place, the section reference ''§ 160.202''.

§ 165.830 [Amended]

■ 48. In § 165.830(c), in the definition of *Barge,* remove the reference ''160.204'' and add, in its place, the reference ''160.202''.

§ 165.921 [Amended]

■ 49. In § 165.921(c), in the definition of *Barge,* remove the reference ''160.204'' and add, in its place, the reference ''160.202''.

§ 165.1181 [Amended]

■ 50. In § 165.1181(e)(1)(ii)(C)(*1*), remove the words ''section 160.203'' and add, in their place, the section reference ''§ 160.202''.

§ 165.1183 [Amended]

■ 51. In § 165.1183(a)(2), in the definition of *High Value Asset,* remove the reference ''160.204'' and add, in its place, the reference ''160.202''.

§ 165.1704 [Amended]

■ 52. In § 165.1704—

■ a. In paragraph (c)(4), after the punctuation mark ''; '', add the word ''and'';

■ b. In paragraph (c)(5), after the term ''6 knots'', remove the text ''; and'' and add, in its place, the punctuation mark ''.''; and

■ c. Remove paragraph (c)(6).

Title 46—Shipping

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

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

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301, and 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 0170.1. Subpart 4.40 issued under 49 U.S.C. 1903(a)(1)(E).

§ 4.05–1 [Amended]

■ 54. In § 4.05–1(b), remove the reference ''160.204'' and add, in its place, the reference ''160.202''.

PART 148—CARRIAGE OF BULK SOLID MATERIALS THAT REQUIRE SPECIAL HANDLING

■ 55. The authority citation for part 148 continues to read as follows:

Authority: 33 U.S.C. 1602; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 46 U.S.C. 3306, 5111; 49 U.S.C. 5103; Department of Homeland Security Delegation No. 0170.1.

§ 148.11 [Amended]

■ 56. In § 148.11(b), in the last row of the Table of Hazardous or Potentially Dangerous Characteristics, remove the reference ''160.204'' and add, in its place, the reference ''160.202''.

Dated: January 15, 2015.

Paul F. Zukunft,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 2015–01331 Filed 1–29–15; 8:45 am]

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Part V

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, *et al.*
Hazardous Materials: Adoption of Special Permits (MAP–21) (RRR); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, 176, 177, 178, and 180

[Docket No. PHMSA–2013–0042 (HM–233F)]

RIN 2137–AF00

Hazardous Materials: Adoption of Special Permits (MAP–21) (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM)

SUMMARY: As required by the Moving Ahead for Progress in the 21st Century Act (MAP–21), the Pipeline and Hazardous Materials Safety Administration is proposing to amend the Hazardous Materials Regulations to adopt provisions contained in certain widely-used or long-standing special permits that have an established safety record. The proposed revisions are intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. PHMSA conducted an extensive analysis of all active special permits and, in this rulemaking, those special permits deemed suitable are being proposed for adoption. PHMSA is inviting all interested persons to provide comments on both those special permits deemed suitable and proposed to be adopted into the HMR and those that are deemed not suitable for adoption. In addition, PHMSA is also requesting comments on a proposed requirement for special permit applicants to include regulatory text in their applications, when appropriate.

DATES: Comments must be received by March 31, 2015.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2013–0042 (HM–233F) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Office of Hazardous Materials Safety, Approvals and Permits Division, (202) 366–4535 or T. Glenn Foster, Office of Hazardous Materials Safety, Standards and Rulemaking Division, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590–0001.

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I. Executive Summary

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by adopting requirements contained in 98 existing special permits (SP). This proposal is based on our review of all active SPs as of January 1, 2013, in which we identified 98 SPs containing requirements which appear suitable for adoption into the HMR as regulations of general applicability. Other SPs are not being proposed for adoption into the HMR because we concluded they contain requirements which (1) would not have, or are being applied in a manner which would not have, broad applicability; or (2) have already been adopted into the HMR, are covered by authorizations in the HMR, or are being addressed in other rulemakings.

We encourage all interested parties, particularly the holders of currently active SPs, to submit comments regarding the SPs we are proposing to adopt into the HMR, the SPs we are not presently proposing to adopt into the HMR, and our preliminary regulatory impact analysis.

II. Background

PHMSA is proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to adopt certain requirements based on existing SPs issued by PHMSA under 49 CFR part 107, subpart B (§§ 107.101 to 107.127). SPs set forth alternative requirements—or a variance—to the requirements in the HMR in a way that achieves a safety level at least equal to the safety level required under the regulations, or when the regulations do not establish a safety level, that is consistent with the public interest. Congress expressly authorized the Secretary of Transportation to issue these variances in the Hazardous Materials Transportation Act of 1975 (49 U.S.C. 5109) as amended.

On July 6, 2013 President Obama signed legislation entitled Moving Ahead for Progress in the 21st Century Act (MAP–21). Section 33012 of this legislation required PHMSA to review and analyze SPs that have been in continuous effect for a 10-year period to determine which ones may be converted into the HMR.[1] The legislation also required PHMSA to issue regulations to adopt any SPs identified as appropriate for adoption in a final rule by October 1, 2015. The legislation provides the following factors to consider during review and analysis to determine suitability for adoption into the HMR:

(1) The safety record of the hazardous materials (hazmat) transported under the SP;

(2) The application of a SP;

(3) The suitability of the provisions in the SP for incorporation into the hazmat regulations; and

(4) Rulemaking activity in related areas.

Prior to the passing of the MAP–21 legislation, PHMSA had completed numerous rulemaking actions, through an established and refined approach, to convert long-standing SPs with an established safety record into the HMR. Following the passage of the MAP–21 legislation, PHMSA modified its approach to align with the requirements of this legislation. Specifically, PHMSA established terms of reference and baseline criteria for the review of long-standing SPs, created tracking tools to monitor progress, and adopted a methodology and timeline to evaluate SPs.

This Notice of Proposed Rulemaking (NPRM) provides an overview of the SP Program to date, a detailed review of the requirements of MAP–21 with regard to this initiative, and a comprehensive explanation of the rationale used to evaluate these SPs both prior to and after the implementation of MAP–21. Furthermore, based on this rationale, this NPRM details the SPs that are deemed not suitable for adoption into the HMR along with the corresponding reasoning, and proposes the adoption into the HMR of SPs that have been deemed suitable through this review. The proposals from all the SPs to be adopted have broad applicability, fit into the scope of the HMR, will increase flexibility in transportation, and provide an equivalent level of safety to the current regulations. PHMSA is inviting comments from all interested parties, particularly SP holders, on both those SPs deemed suitable and proposed to be adopted and those that are deemed not suitable for adoption.

III. Overview

A. SPs Program

PHMSA's Approvals and Permits Division[2] is responsible for the issuance of DOT SPs and Approvals. A SP sets forth alternative requirements, or variances, to the requirements in the HMR. Federal hazardous materials transportation law (49 U.S.C. 5101–5128) authorizes PHMSA to issue such variances in a way that achieves a safety level that is at least equal to the safety level required under Federal hazmat law or is consistent with the public interest if a required safety level does not exist. SPs also address unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers.

SPs are issued by PHMSA under 49 CFR part 107, subpart B (§§ 107.101 to 107.127). The HMR are generally performance-oriented regulations, and as such, provide the regulated community with some flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and covered under the regulations. The hazardous materials community is at the cutting edge of developing new materials, new technologies, and innovative ways of moving hazardous materials. Innovation strengthens our economy, and some new technologies and operational techniques may enhance safety. Thus, while not compromising safety, SPs provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. In addition, SPs enable the hazardous materials industry to safely, quickly, and effectively integrate new products and technologies into production and the transportation stream.

PHMSA conducts ongoing reviews of SPs to identify widely-used and long-standing SPs with established safety records for conversion into regulations of broader applicability. Converting these SPs into regulations reduces paperwork burdens for the government and applicants and facilitates commerce while maintaining safety. Additionally, adoption of SPs as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the SPs. Factors that influence whether or not a specific SP is a candidate for regulatory action include: the safety record for hazardous materials transported or operations conducted under a SP; potential for broad application of a SP; suitability of the provisions in the SP for adoption into the HMR; rulemaking activity in related areas; and agency priorities.

Since the inception of the SP program, PHMSA has periodically reviewed SPs and under various rulemaking actions certain widely-used or long-standing SPs that have an established safety record have been adopted or recently proposed for incorporation into the HMR. For example, PHMSA has adopted or proposed 94 SPs into the HMR since 2008. These 94 SPs represent a decrease of 13,947 holders of SPs. These rulemakings are noted in Table 1.

TABLE 1—PREVIOUS RULEMAKING ACTIONS[3]

Docket	Title	Purpose	Number of permits	Holders
Docket No. PHMSA–2006–25910 (HM–218E).	Miscellaneous Cargo Tank Motor Vehicle and Cylinder Issues; Petitions for Rulemaking.	Amended the HMR to revise certain requirements applicable to the manufacture, maintenance, and use of DOT and MC specification cargo tank motor vehicles, DOT specification cylinders and UN pressure receptacles.	2	15.

[1] Although MAP–21 only required PHMSA evaluate SPs that had been in continuous effect for a 10-year period, PHMSA reviewed all active SPs as of January 1, 2013.

[2] *http://www.phmsa.dot.gov/hazmat/permits-approvals/special-permits*

TABLE 1—PREVIOUS RULEMAKING ACTIONS [3]—Continued

Docket	Title	Purpose	Number of permits	Holders
PHMSA–2008–0005 (HM–215J).	Revision to Requirements for the Transportation of Batteries and Battery-Powered Devices; and Harmonization with the UN Recommendations, IMDG Code, and ICAO Technical Instructions.	Amended the HMR to maintain alignment with international standards by adopting various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements.	3	6.
Docket No. PHMSA–2009–0151 (HM–218F).	Miscellaneous Amendments	Amended the HMR to make miscellaneous revisions to update and clarify certain regulatory requirements.	1	1.
PHMSA–2009–0289 (HM–233A).	Incorporation of SPs into Regulations.	Amended the HMR to adopt provisions contained in certain widely-used or long-standing SPs that have an established safety record.	44	510.
PHMSA–2010–0017 (HM–245).	Incorporation of Cargo Tank SPs.	Amended the HMR to adopt provisions contained in certain widely-used or long-standing cargo tank SPs that are granted to multiple parties and have established safety records.	6	Over 10,000.
PHMSA–2010–0018 (HM–216B).	Incorporating Rail SPs	Amended the HMR to adopt SPs which authorized an alternative tank car qualification program, acceptance of shipping paper information by voice or electronic data interchange, provide alternative rail car segregation requirements for explosives, alternative tank car design requirements, and alternative unloading provisions for coupled tank cars.	7	250.
PHMSA–2010–0201 HM–254.	Approval and Communication Requirements for the Safe Transportation of Airbag Inflators, Airbag Modules, and Seat-belt Pretensioners.	Amended the HMR applicable to airbag inflators, airbag modules and seat-belt pretensioners by authorizing an alternative review and verification process for these devices, and eliminating the current requirements to have hundreds of these devices approved by PHMSA prior to shipment.	2	2,131.
PHMSA 2011–0138 (HM 218G).	Miscellaneous Amendments (RRR).	Amended the HMR by adopting SPs to authorize the transportation by motor vehicle of certain regulated medical wastes, designated as sharps, in non-DOT specification containers fitted into wheeled racks.	1	1.
PHMSA–2011–0142 (HM–219).	Miscellaneous ..... Petitions for Rulemaking (RRR).	Amended the HMR to no longer require re-application for a SP to place the Dangerous Cargo Manifest in locations designated by the master of the vessel besides ''on or near the bridge'' while the vessel is docked in a United States port while cargo unloading, loading, or handling operations are underway and the bridge is unmanned.	1	1.
PHMSA–2011–0158 (HM–233C).	Incorporation of Certain SPs and Competent Authorities into Regulations.	Amended the HMR to adopt provisions contained in several SPs that provide greater regulatory flexibility. The SPs in this action addressed a variety of alternative provisions, including alternative packaging authorizations for specific hazardous materials (HM), and would eliminate approval requirements for variances in the manufacture of fiberboard packagings.	18	466.
PHMSA–2011–0345 (HM–233D) (NPRM).	Requirements for the Safe Transportation of Bulk Explosives (RRR).	Proposes to amend the HMR by establishing standards for the safe transportation of bulk explosives. This rulemaking would also be responsive to two petitions (P–1557, P–1583).	9	566.
Total	.....	.....	94	13,947.

B. MAP–21 Legislation

Section 33012 of the MAP–21 legislation modified § 5117 (f) of the Federal Hazardous Materials Transportation Law. Specifically, under the ''SPs and exclusions'' paragraph (f) was revised to read as follows:

''(f) Incorporation into regulations.

(1) IN GENERAL—Not later than 1 year after the date on which a SP has been in continuous effect for a 10-year period, the Secretary shall conduct a review and analysis of that SP to determine whether it may be converted into the hazardous materials regulations.

(2) FACTORS—In conducting the review and analysis under paragraph (1), the Secretary may consider—

(A) the safety record for hazardous materials transported under the special permit;

(B) the application of a special permit;

(C) the suitability of provisions in the special permit for incorporation into the hazardous materials regulations; and

[3] This table represents only published rulemakings since January 1, 2008.

(D) rulemaking activity in related areas.

(3) RULEMAKING—After completing the review and analysis under paragraph (1) and after providing notice and opportunity for public comment, the Secretary shall either institute a rulemaking to incorporate the special permit into the hazardous materials regulations or publish in the **Federal Register** the Secretary's justification for why the special permit is not appropriate for incorporation into the regulations.''

This modification required PHMSA to review and analyze SPs that have been in effect for 10 years or more and determine which should be converted into regulations; set parameters for the review; and issue regulations to adopt any SPs identified as appropriate for adoption in a final rule by October 1, 2015. Following the publication of the final rule, this process would be completed annually to ensure appropriate SPs are converted into the HMR on a consistent basis.

The legislation also required PHMSA to address other issues related to the SP and approvals regulations and program processes. Specifically, PHMSA is required to issue regulations on standard operating procedures to support administration of the SP and approval programs. This requirement is being addressed under Docket PHMSA 2012–0260 (HM–233E) in a Notice of Proposed Rulemaking (NPRM) published on August 12, 2014 [79 FR 47047].

Table 2 summarizes all of the MAP–21 requirements related to the SP program, the corresponding rulemaking actions, and required completions dates:

TABLE 2: MAP–21 SUMMARY

MAP–21 Citation	MAP–21 Requirement	Docket	Required completion date
§ 33012			
(a)	Rulemaking mandate. PHMSA shall issue regulations that establish: (1) Standard operating procedures to support administration of the SP and approval programs; and (2) Objective criteria to support the evaluation of SP and approval applications.	PHMSA 2012–0260 (HM–233E).	Final rule due by 10/01/2014.
(b)	Initial review and analysis of SPs that have been in continuous effect for a 10-year period to determine which ones may be converted into the hazmat regulations. Factors to consider: (1) The safety record of hazmat transported under the SP; (2) The application of a SP; (3) The suitability of provisions in the SP for incorporation into the hazmat regulations; and (4) Rulemaking activity in related areas.	PHMSA–2013–0042 (HM–233F).	Review and analysis due by 10/01/2013.
(b)	Rulemaking mandate. Issue regulations to incorporate into the hazmat regulations any SPs identified in the initial review and analysis that PHMSA determines are appropriate for incorporation based on the review factors.	PHMSA–2013–0042 (HM–233F).	Final rule due by 10/01/2015.
(c)	Ongoing review and analysis of SPs. Not later than 1 year after the date on which a SP has been in continuous effect for a 10-year period, PHMSA shall conduct a review and analysis of that SP to determine whether it may be converted into the hazmat regulations. Factors to consider: (1) The safety record of hazmat transported under the SP; (2) The application of a SP; (3) The suitability of provisions in the SP for incorporation into the hazmat regulations; and (4) Rulemaking activity in related areas	Continuous future rulemaking actions on a yearly basis.	Review and analysis due by 10/01/2015 and to be completed on an annual basis.
(d)	Rulemaking mandate. After completing the review and analysis of SPs that have been in continuous effect for a 10-year period, PHMSA shall either institute a rulemaking to incorporate the SP into the hazmat regulations or publish in the FEDERAL REGISTER its justification for why the SP is not appropriate for incorporation into the regulations.	Continuous future rulemaking actions on a yearly basis.	Final rule or notice of no rulemaking decision due by 10/01/2016.

C. SP Conversion Project Methodology

As previously stated, in the past, PHMSA has analyzed, evaluated, and adopted SPs into the HMR. In addition, PHMSA had already established an approach to adopt SPs into the HMR. However, the requirements contained in MAP–21 necessitated that PHMSA modify and formalize this approach. This section describes the SP Conversion Project (SPCP) and the methodology used to satisfy the requirements of MAP–21.

The following table summarizes the different phases of the SPCP. Specifically, this table briefly discusses the efforts of each phase and the timeframe in which it was completed. Furthermore, this table demonstrates how the entire project was divided into the two primary stages of analysis and rulemaking. Each phase of the SPCP is described in Table 3.

TABLE 3—SPCP METHODOLOGY

	Phase	Description of action	Timeframe
Analysis	Phase 1: Development of Methodology.	The SPCP Management team developed a methodology to consistently evaluate SPs, a system to track this analysis, sub-teams and sub-topic areas used to group similar SPs to be reviewed by the appropriate subject matter experts, and timelines and milestones.	July 2012–January 2013.
	Phase 2: Preliminary Analysis.	An initial review of all SPs was conducted. SPs were divided by topics and sub-topics and each transportation regulations specialist was assigned a grouping. These specialists reviewed each permit and made a determination as to an SP's suitability for adoption into the HMR based on guidance provided by the SPCP Management team.	January 2013–April 2013.
	Phase 3: Mentor Review.	The members of the SPCP Management were assigned topics and conducted a second review of the SPs deemed either not suitable or flagged for further review.	April 2013–May 2013.
	Phase 4: Team Analysis	PHMSA then established rulemaking teams for each topic composed of a team leader, mentor, and team members from each PHMSA Division and our modal partners. These teams then conducted a second review of those SPs deemed suitable and those flagged for follow-up.	June 2013–August 2013.
Rulemaking	Phase 5: Drafting	For SPs deemed suitable, the team drafted regulatory text along with preamble language justifying inclusion into the HMR. The finalized draft of each topic was then submitted to the SPCP Management team for final review.	June 2013–September 2013.
	Phase 6: Consolidate Rulemaking.	Following review by the SPCP Management team, the topic rulemakings were then combined into a master draft along with additional preamble language, regulatory analysis, and information collection activities.	September 2013–November 2013.
	Phase 7: Rulemaking Coordination.	The master draft created was then vetted throughout the agency and with our modal partners. In addition, the rulemaking was coordinated with the Office of the Secretary of Transportation and the Office of Management and Budget.	December 2013–October 2014.
	Phase 8: Rulemaking Publication.	Following concurrence from all entities, PHMSA submitted this rulemaking to the **Federal Register** for publication.	November 2014.

Phase 1: Development of Methodology

As stated above, prior to the publication of MAP–21, PHMSA conducted reviews of SPs to identify widely-used and long-standing SPs with an established safety record for conversion into the HMR for broader applicability. The SPs suitable for adoption were predominantly identified by two methods: petitions for rulemaking submitted in accordance with § 106.105; and through a review of the SP application by the Approvals and Permits Division staff at the time of application. Specifically, during the evaluation of a SP application, the specialist reviewing the application could ''tag'' a SP as a future candidate for adoption into the regulations. At a later date after a positive safety record had been established, the SP would be proposed for adoption in a future rulemaking. This method to adopt SPs, however, was not conducted on a defined and predictable schedule.

After President Obama signed the MAP–21 legislation, PHMSA modified its SP conversion practices and developed an overall strategy to specifically address the aspects of the requirements of MAP–21 that were not reflected in current procedures. In an effort to address the specific requirements for SP conversion, PHMSA's Standards and Rulemaking Division created a SPCP management team. This SPCP management team developed a methodology to consistently evaluate SPs, a system to track the analysis, created rulemaking sub-teams, topics and sub-topic areas to combine similar SPs to be reviewed by the appropriate subject matter experts (SME) and teams, and established timelines and milestones.

As MAP–21 included specific deadlines for the various aspects of the SPCP, PHMSA created an overall project timeline. This timeline was established by utilizing the Standards and Rulemaking Division's knowledge of the current rulemaking process and working backwards from the deadlines required by MAP–21. The timeline was divided into two main parts; analysis (Phases 1–4) and rulemaking drafting and coordination (Phases 5–8). Each of these portions of the timeline included specific deliverables.

Each SP being analyzed was assigned to one of 6 topic areas. These topic areas were established to reflect the main utility and purpose of the SP. These topic areas of the SPs, an overview of each topic area, and the affected number of SP holders are displayed in Table 4.

TABLE 4—TOPIC OVERVIEW

Topic	Overview	Holders [total # in grouping]
Cylinders—General	The SPs pertaining to cylinders that are proposed to be adopted into the HMR in this NPRM provide exceptions to existing general cylinder requirements.	721
Cylinders—NDT/Aerosols [4]	The SPs pertaining to acoustic emission (AE) and ultrasonic examination (UE) testing of cylinders and to aerosols that are proposed to be adopted into the HMR in this NPRM provide exceptions to existing cylinder requirements specific to cylinder non-destructive testing (NDT) and aerosols.	396

TABLE 4—TOPIC OVERVIEW—Continued

Topic	Overview	Holders [total # in grouping]
Cargo Tanks/Rail Cars/Portable Tanks	The SPs pertaining to cargo tanks, rail cars, and portable tanks that are proposed to be adopted into the HMR in this NPRM provide exceptions to existing cargo tanks, rail cars, and portable tanks requirements.	321
Operational Air/Vessel	The SPs pertaining to operational issues for aircraft or vessel transportation that are proposed to be adopted into the HMR in this NPRM provide exceptions to existing requirements for vessel and aircraft shipments.	207
Operational Highway/Rail/ ..... Shipper/Other	The SPs pertaining to operational issues for highway or rail transport, shipper requirements, and other general areas that are proposed to be adopted into the HMR in this NPRM provide exceptions to existing highway and rail operations, shipper, and other general requirements.	1,226
Non-Bulk Packaging Specifications/IBCs	The SPs pertaining to non-bulk packagings, IBCs, and packaging specifications that are proposed to be adopted into the HMR in this NPRM provide exceptions to the packaging specification requirements.	820
Total	.....	3,691

These topic areas were then used to develop teams to address each grouping of SPs. Each topic area was further broken down into sub-topic areas which reflected the specific area of transportation that the SP affected. These sub-topic areas included manufacturing, retest, and use. Breaking down the SPs into topics and sub-topics ensured that the appropriate SMEs would be reviewing SPs and allowed for more efficient delegation of the workload.

As mentioned above, teams were established based on topic areas to handle Phase 3 (Team Analysis) and Phase 4 (Drafting) of the SPCP. Teams were comprised of the appropriate SMEs from the Standards and Rulemaking Division, the Engineering and Research Division, the Approvals and Permits Division, Field Operations, the Program Development Division, the Office of Chief Counsel and our modal partners, the Federal Aviation Administration (FAA), the United States Coast Guard (USCG), the Federal Railroad Administration (FRA) and the Federal Motor Carrier Safety Administration (FMCSA). In addition, each team was assigned a team lead and a team mentor from the SPCP Management team. The teams met on a frequent basis throughout Phase 3 and Phase 4 to discuss progress on their assignments and to pinpoint and resolve issues with the SP conversion.

Throughout every phase of the SPCP, the status of all currently active SPs was tracked in a database designed specifically for this project. This database detailed the specialist and team assigned to the review of the SP, the current status of the SP and the code [5] it was assigned following completion of the review. This database also tracked the completion of the drafting of regulatory text for any given SP and provided a brief summary of the SP. In addition, the SPCP Management team closely monitored timelines and milestones in a database specifically tailored to the SPCP.

Phase 2: Preliminary Analysis

MAP–21 specifically mandated PHMSA issue regulations to adopt into the HMR any SPs that had been in continuous effect for a 10-year period and that PHMSA determined through its analysis are appropriate for adoption based on the review factors. While MAP–21 limited this analysis and review to SPs with a lifespan of greater than 10 years, PHMSA decided that an initial review of all active SPs would provide a greater benefit. A complete review of all SPs was conducted because many of the SPs are interconnected and interrelated. For example, some SPs are very similar with only minor differences between them and the inclusion of one SP may justify the inclusion of other similar SPs. In addition, PHMSA did not want to automatically disqualify a SP from consideration just because the SP was not in effect for 10 years. A SP may be extensively used and have an established history of safe use even if it is less than 10 years old. As MAP–21 also requires the periodic review of SPs over 10 years of age, PHMSA rationalized that a larger initial review would considerably streamline and limit the number of SPs to be evaluated in future reviews.

In January 2013, PHMSA began a systematic review of 1,168 existing SPs utilizing the criteria required by the MAP–21 legislation to determine suitability for adoption into the HMR. Transportation Regulations Specialists within the Standards and Rulemaking Division were assigned groupings of SPs. Each specialist was given instructions on how to uniformly and consistently review a SP. For the groups of SPs assigned, each specialist was instructed to:

- Provide a brief summary of each SP;
- Identify the key/other regulatory sections of the HMR affected;
- Make a determination on the suitability for adoption (Guidance was provided on assigning each SP a code relating to its suitability. These codes are discussed in further detail later in this document);
- Assign the SP to a topic area;
- Provide rationale for their findings; and
- Account for any recordkeeping issue that they faced.

Specialists then reviewed the SPs and, based on the guidance developed by the SPCP management team, they made a determination of which code the SP would be assigned (See Table 5). If specialists had doubts or concerns about any particular SP, they would assign a proposed code and flag the SP in the tracking database for second level mentor review in Phase 3.

In April 2013, the preliminary analysis was completed with roughly 300 SPs deemed suitable for adoption. In addition, approximately 185 SPs were flagged for second level review by the SPCP management team in Phase 3.

[4] For the purposes of this rulemaking Non-Destructive Testing (NDT) includes Ultrasonic Examination (UE) and Acoustic Emission (AE).

[5] Each SP was assigned a code that represented a rationale for the SP being suitable or not suitable for adoption into the HMR. These codes were based on PHMSA's factors for suitability combined with the rationales provided in MAP–21.

Phase 3: Mentor Review: Review of SPs Flagged and Not Suitable

From April through May 2013, the rulemaking mentors for each topic team conducted a second review of all SPs deemed not suitable for adopting into the HMR (roughly 690 SPs) and those tagged for further review in the Phase 2 review (185 SPs). Specifically, the mentors divided the SPs in need of further review among themselves, evaluated each permit against the requirements of MAP–21, and made a determination on the SP when possible. If the mentors were unable to make a determination, the SP remained flagged and the SP topic team would make a group determination in Phase 4.

Phase 4: Team Analysis

PHMSA then utilized six rulemaking teams, one for each topic area. As previously stated, each team was composed of a team leader, mentor, and team members from each PHMSA Division and our modal partners (FAA, USCG, FRA and FMCSA). Team leaders were tasked with the overall completion of the topic and the distribution of work assignments. Mentors were charged with reviewing the teams' data, and providing edits to ensure the 6 topics were cohesive and would form a complete and understandable NPRM. The team leaders and mentors of each topic area were members of the Standards and Rulemaking Division. Each topic area was handled as if it were its own rulemaking project.

While each team leader approached the team analysis phase in their own manner, the team members were utilized consistently throughout the SPCP, regardless of project. For example, modal partners focused on aspects of proposed SPs specific to their mode of transportation or aspects of SPs that could have wider implications in their mode. Team members from the Standards and Rulemaking Division primarily drafted the regulatory text and rulemaking preamble language. The Engineering and Research Division focused primarily on the technical aspects of each SP, the evaluation and development of regulatory text, and the technical implications of the introduction of new technologies that a SP may provide. The Approvals and Permits Division focused primarily on the history of each SP, the evaluation and development of regulatory text and the suitability determinations of the SPs. PHMSA Field Operations provided a review of enforcement actions of the SPs that were deemed suitable and assisted in the incident data research of each SP. The Program Development Division assisted in the review of the incident data research of the SPs and the evaluation of the cost and benefit data for the SPs that were deemed suitable. Finally, the Office of Chief Counsel primarily dealt with the editing of regulatory text and rulemaking preamble language as well as providing assistance in completing the regulatory analysis.

Each topic team tracked its status in a database, specifically noting when regulatory text was completed. The teams also used this database to record information to be included in the preamble explanations for each SP. For the SPCP, all draft regulatory text was completed in September 2013, at which point the team mentors provided edits and worked with each team to formulate a final version of each topic. In addition, each team provided a completed document containing lists of all suitable SPs, all non-suitable SPs, and the assigned codes to explain why the non-suitable SPs would not be included.

Phase 5–8: Rulemaking: Drafting, Consolidation, Coordination, and Publication

As the final phase, PHMSA consolidated its analyses and conclusions, evaluated compliance with statutory requirements and governmental policies and procedures applicable to the regulatory process, and prepared this NPRM to address each topic area. These requirements include Executive Orders, Office of Management and Budget (OMB) Bulletins, DOT orders and procedures, the Administrative Procedures Act, and others. PHMSA uses a common process to identify, develop, track, prioritize, and implement regulatory changes in line with applicable DOT and Federal government policies and procedures. The Standards and Rulemaking Division has a Standard Operating Procedure (SOP) in place which is intended to outline and serve as a reference for persons engaged in the regulatory process and to ensure that all applicable requirements are met. This rulemaking was completed, as with all rulemakings, using this SOP.

For this rulemaking, due to the comprehensive nature of the project, it was broken down into topics with teams assigned to each topic. Each topic area was then handled as if it were its own rulemaking project. While Phases 1–4 represented the analysis portion of this project, Phases 5–8 encompassed the rulemaking portion. Following the completion of the team analysis in Phase 4, team mentors edited and compiled the topics into one master document.

Future Reviews

As required by MAP–21, PHMSA plans to conduct annual reviews of SPs which have been in effect for more than 10 years. These reviews and analysis of SPs will use the same methodology and tools as those used in this rulemaking. PHMSA anticipates future analysis and review will be streamlined due to the reduced number of SPs to be evaluated and the experience gained through this evaluation.

In addition, PHMSA is considering modifications to the manner in which it writes new SPs in order to more accurately reflect how the HMR is written. In this NPRM, PHMSA is requesting comments as it considers a future proposal to require an applicant to provide potential regulatory text when submitting an application for a SP in order to facilitate adoption of SPs into the HMR.

D. Petitions for Rulemaking

PHMSA also considered several petitions for rulemaking submitted in accordance with § 106.105 that may impact SPs reviewed in this rulemaking. These petitions are discussed below.

P–1607

The Council on the Safe Transportation of Hazardous Articles (COSTHA) submitted a petition for rulemaking under P–1607 to adopt the provisions of DOT SP–11458 that authorizes display packs of consumer commodity packages that exceed the 30 kg gross weight limitation. This petition has been accepted by PHMSA and is being proposed in this rulemaking. See the discussions in §§ 171.8 and 173.56 under the ''Operational Highway/Rail/Shipper/Other'' heading of this rulemaking.

P–1608

The Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking under P–1608 to adopt the provisions of DOT SP–11903 into the HMR. This petition requests that PHMSA propose to adopt standards for the construction and use of Fiber Reinforced Plastic (FRP) Cargo Tanks. Currently, these tanks are constructed under DOT–SP 11903 and used under party status in DOT SP–9166. In addition to DOT SP–11903 and DOT SP–9166, there are other SPs that address these standards. PHMSA is not proposing to adopt these SPs at this time as there is not a uniform standard for FRP Cargo Tanks ready for adoption. However, PHMSA is working to develop a uniform standard for FRP cargo tanks and will address this issue in a future rulemaking.

P–1610

COSTHA submitted a petition for rulemaking under P–1610 to adopt the provisions of DOT–SP 11110 into the HMR. This SP authorizes cargo aircraft operators to load division 1.4S and Class 8, PG III materials in inaccessible cargo locations in excess of the limitations specified in § 175.75(c). This petition has been accepted by PHMSA for consideration in a future rulemaking. However, at this time PHMSA is not proposing to adopt this SP because of concern that more time is needed to research the potential impact of changes to § 175.75 and to coordinate this review with the appropriate parties, including our modal partners.

P–1611

COSTHA submitted a petition for rulemaking under P–1611 to adopt the provisions of DOT–SP 11470 into the HMR. This SP authorizes the transportation in commerce of shrink-wrapped pallets containing boxes of waste ORM–D materials with the word ''WASTE'' marked on the outside of the pallet instead of the individual box. This petition has been accepted by PHMSA and is being proposed in this rulemaking. See the discussion in § 173.12 under the ''Operational Highway/Rail/Shipper/Other'' heading of this rulemaking.

E. SP Evaluation Results

PHMSA is committed to the SP adoption process established by Congress in MAP–21. To ensure that the changes made under this action are as efficient and effective as possible, PHMSA solicits input from its stakeholders. We have used several tables throughout this rulemaking to clearly identify SPs that are suitable for adoption and those that have been deemed not suitable. As required by MAP–21 the initial review and analysis of SPs considered the following factors:

- The safety record of hazardous materials transported under the SP;
- The application of a SP;
- The suitability of provisions in the SP for adoption into the HMR; and
- Rulemaking activity in related areas.

Based on these factors, the SPCP team developed and assigned codes to each SP being reviewed. These codes represent the rationale for adopting or not adopting a SP into the regulations. Table 5 explains each code.

TABLE 5—SPCP CODE KEY

Code	Title	Explanation
Code 1	Suitable for Adoption	SPs suitable for adoption.
Code 2	Not Suitable for Adoption: The application of the SP	SPs not suitable because of the manner in which applied. Because the purpose of the MAP–21 directive was to reduce need for SPs where widely-used, many of these SPs were not considered suitable for adoption because of their application; i.e., they were not widely-used, were too technical in nature, or were too specific to a SP holder. This Code was applied to both single and multiple holders of SPs.
Code 3	Not Suitable for Adoption: The suitability of the provision in the SP for adoption into the HMR.	SPs not suitable for adoption because of the lack of broad applicability. Similar to Code 2, many of these SPs were not considered suitable for adoption because of the specificity of the SP. The terms of these SPs often included an inability to provide the same exception in a broad manner applicable to certain geographical locations or safety controls. This Code was also applied to both single and multiple holders of SPs.
Code 4	Not Suitable for Adoption: Rulemaking activity in related areas.	SPs being addressed in other rulemakings.
Code 5	Already adopted or otherwise covered under current regulations.	SPs already adopted or authorizations already specified in the current HMR. For example, these SPs will be terminated as they are no longer necessary since the provisions contained within have already been adopted or have been covered under current regulations.

Evaluation Summary

After completion of the evaluation segment of the SPCP, PHMSA identified 98 currently-active SPs that were suitable to be proposed for adoption in this rulemaking action. The SPCP evaluated 1,168 permits that represented 3,691 holders of SPs that were active on January 1, 2013. The adoption of these 98 SPs would impact 728 SP holders, as shown in Table 6. If the SPs proposed for adoption into the HMR in this rulemaking were to be adopted in a final rule, there would be an approximate 8% reduction in the number of SPs and approximate 20% reduction in the number of holders of SPs. PHMSA anticipates the final number of SPs adopted in the final rule may vary from this original number based on input from public comments received in response to this rulemaking and ongoing SP activity.

TABLE 6—SPCP IMPACT

	SPs	Holders
SPs Proposed for Adoption in this Rulemaking Action	98	728
Total Number Evaluated	1,168	3,691
Percent Reduction	8.39%	19.72%

When combined with previous regulatory efforts to adopt SPs into the HMR, the impact is increased to 192 total SPs adopted since 2008, affecting 14,675 holders of SPs, as shown in Table 7.

TABLE 7—SPs ADOPTED AND AFFECTED HOLDERS

	SPs	Holders
SPs Eliminated in Previous Rulemaking actions since 2008	94	13,947
SPs Proposed for Adoption in this Rulemaking Action	98	728
Total	192	14,675

After this initial review of all SPs, PHMSA plans to annually review SPs that have been in effect for more than 10 years. PHMSA's ongoing review and analysis of SPs will use the same methodology and tools as in this rulemaking. PHMSA anticipates future analysis and review will be streamlined due to the reduced number of SPs to be evaluated and the experience gained through this evaluation.

Suitable for Adoption

The analysis phase of the SPCP identified 98 SPs (728 holders of SPs) that were deemed suitable for adoption. Table 8 summarizes the SPs deemed suitable, their assigned topic area, a summary of the permit, and the number of holders of SPs. All suitable SPs were deemed to be Code 1.

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION

Permit No.	Category	Summary	Holders
		Cylinders General	
SP6530	Cylinders General	Authorizes transportation in commerce of hydrogen and mixtures of hydrogen with helium, argon or nitrogen, in certain cylinders filled to 110% of their marked service pressures.	26
SP8074	Cylinders General	Authorizes transportation in commerce of certain flammable and non-flammable gases in DOT specification 3E cylinders measuring 2 inches in diameter by 12 inches long without a safety relief device.	5
SP12084	Cylinders General	Authorizes use of certain DOT specification 4B, 4BA, or 4BW cylinders, which are protected externally by a suitable corrosion-resistant coating (such as galvanizing or painting), for transportation in commerce of certain gases when retested and marked in accordance with the requirements specified in § 180.209(e). In lieu of a 5 year periodic hydrostatic test, or testing in accordance with § 173.213(c)(2), the prescribed cylinders may be retested and marked in accordance with § 180.209(e).	1
SP12301	Cylinders General	Authorizes transportation in commerce of chloropicrin and methyl bromide mixtures in a DOT specification 4BW cylinder having a capacity greater than that specified in § 173.193(b).	8
SP12782	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders, containing Divisions 2.1, 2.2 or 2.3 materials, equipped with plastic valve protection caps.	5
SP13318	Cylinders General	Authorizes transportation in commerce of DOT specification 39 cylinders of 75 cubic inches or less volume, except as specified, for transportation in commerce of certain hazardous materials.	2
SP13544	Cylinders General	Authorizes transportation in commerce of DOT specification 4BA240 cylinders containing liquefied petroleum gas (LPG) and/or residue of LPG without hazard warning labels when transported in a closed transport vehicle that is placarded.	1
SP13599	Cylinders General	Authorizes transportation in commerce of certain Division 2.2 materials in certain DOT specification seamless steel cylinders.	1
SP14251	Cylinders General	Authorizes transportation in commerce of overpacked cylinders containing Class 2 materials with CGA C–7 neck ring labels in lieu of the standard label.	6
SP14419	Cylinders General	Authorizes transportation in commerce of pyrophoric liquid n.o.s. in DOT specification 3AL cylinders that are not authorized for that material.	3
SP14937	Cylinders General	Authorizes transportation in commerce of certain cylinders that have requalification markings on a label embedded in epoxy in lieu of stamping for the transportation of various refrigerant gases.	1
		Cylinders—NDT/Aerosols	
SP7951	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain aerosols containing Division 2.2 materials, with a charge pressure not exceeding 150 psig at 75 °F when shipped in a refrigerated state.	5
SP8786	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of limited quantities of compressed gases, Division 2.2, in accumulators which deviate from the required retest parameters.	6
SP11296	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain waste aerosol cans containing flammable gas propellants, including isobutane and propane, overpacked in a UN1A2 steel drum or a UN1H2 plastic drum for disposal.	128

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders
SP12573	Cylinders—NDT/Aerosols	Authorizes manufacture, marking, sale and use of a non-refillable, non-DOT specification inside metal container conforming with regulations applicable to DOT specification 2Q, for transportation in commerce of certain hazardous materials.	1
SP12995	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain DOT 2Q specification, non-refillable containers containing polyurethane foam or foam components that will be tested by other means in lieu of subjecting each container to a hot water bath.	1
SP13581	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of insecticide aerosol fogger in non-DOT specification non-refillable inside containers.	1
SP13601	Cylinders—NDT/Aerosols	Authorizes manufacture, marking, sale and use of non-DOT specification containers for transportation in commerce of certain non-flammable aerosols containing foodstuffs at pressures exceeding those authorized.	1
SP14429	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of a DOT specification 2P non-refillable aluminum in-side container which has been leakage tested by an automated in-line pressure check in lieu of the hot water bath specified in the HMR.	2
SP14440	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of Division 2.1 aerosols in certain non-refillable containers which have been tested by an alternative method in lieu of the hot water bath test.	1
SP14503	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of aerosol foodstuffs in a non-refillable metal container similar to DOT specification 2P and 2Q.	1
SP14544	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of Division 2.1 and 2.2 hazardous materials in certain non-DOT specification and DOT specification non-refillable aerosol containers which have been tested by an alternative method in lieu of the hot water bath test.	1
SP14623	Cylinders—NDT/Aerosols	Authorizes manufacture, marking, sale, and use of a bag-on-valve, non-refillable, aerosol container which has been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container must be subject to an automated pressure test on the line.	1
SP14625	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of aerosols in certain non-refillable containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container will be subject to an automated pressure test on the line.	1
SP14627	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of aerosols in certain non-refillable containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container must be subject to an automated pressure test on the line.	1
SP14723	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of aerosols containing a Division 2.2 compressed gas in certain non-refillable aerosol containers which are not subject to the hot water bath test.	1
SP14724	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of an aerosol in certain non-refillable containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container will be subject to an automated in-line pressure test.	1
SP14786	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of DOT specification 2P and 2Q aluminum non-refillable inside containers which are leak tested by an automated in-line pressure check in lieu of the hot water bath specified in the HMR.	1
SP14842	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of consumer commodity (pressurized by nitrogen, compressed) and aerosols, non-flammable, (each not exceeding 1 L capacity) in DOT specification 2P non-refillable aluminum inside containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container will be subject to an automated pressure test on the line.	1
SP14887	Cylinders—NDT/Aerosols	Authorizes transportation of aerosols and consumer commodities in commerce of DOT specification 2P and 2Q metal non-refillable inside containers and non-DOT specification metal inside containers which are leak tested by an automated in-line pressure check in lieu of the hot water bath specified in the HMR.	2
SP14953	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of DOT specification 2Q non-refillable aluminum inside containers which have been leakage tested by an 100% automated in-line pressure check in lieu of the hot water bath test.	1
SP15135	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain DOT 2P non-refillable metal containers (containing a laminate bag on valve system) which are leak tested by an automated in-line pressure check in lieu of the required hot water bath test.	1
SP15265	Cylinders—NDT/Aerosols	Authorizes manufacture, mark, sale and use of non-DOT specification bag-on-valve spray packaging similar to an aerosol container without requiring the hot water bath test conforming with all regulations applicable to a DOT specification 2P or 2Q, except as specified herein, for the transportation in commerce of certain hazardous materials.	1

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders
SP15427	Cylinders—NDT/Aerosols	Authorizes manufacture, mark, sale and use of non-refillable inside containers which are leak tested by an automated in-line pressure check in lieu of the hot water bath specified in the HMR.	2
SP15792	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of DOT specification 2P non-refillable aluminum inside containers which have been tested by an alternative method in lieu of the hot water bath test. In lieu of the hot water bath, each container will be subject to an automated pressure test on the line.	1
		Cargo Tanks/Rail Cars/Portable Tanks	
SP12039	Cargo Tanks/R Rail Cars/Portable Tanks.	Authorizes transportation in commerce of DOT 113C120W tank cars containing ethylene, refrigerated liquid, at an internal pressure of 20 psig instead of the maximum 10 psig.	3
SP12576	Cargo Tanks/Rail Cars/Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification tanks conforming with all regulations applicable to a DOT specification MC 331 cargo tank, except as specified, for transportation in commerce of certain hazardous materials.	1
		Operational Air/Vessel	
SP11150	Operational Air/Vessel	Authorizes transportation in commerce of liquefied petroleum gas in DOT specification cylinders, secured to transport vehicles on passenger ferry vessels.	1
SP11691	Operational Air/Vessel	Authorizes transportation in commerce of certain flammable and corrosive liquids, which are the ingredients of soft drinks (beverages), not subject to the segregation requirements for vessel stowage when shipped in the same transport unit.	10
SP13213	Operational Air/Vessel	Authorizes stowage aboard passenger ferry vessels of private motor vehicles such as recreational vehicles, with attached cylinders of liquefied petroleum gas in addition to extra containers of gasoline (including camp stove or lantern fuel) and portable cylinders of liquefied petroleum gas.	1
SP14458	Operational Air/Vessel	Authorizes private motor vehicles such as recreational vehicles, with attached cylinders of liquefied petroleum gas in addition to extra containers of gasoline (including camp stove or lantern fuel) and portable cylinders of liquefied petroleum gas to be stowed aboard passenger ferry vessels.	1
		Operational Highway/Rail/Shipper/Other	
SP4850	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce by motor vehicle, rail freight, cargo vessel, and cargo aircraft of limited quantities of certain approved explosive articles (UN0237, charges, shaped, flexible, linear; and UN0104, cord, detonating, mild effect or fuse, detonating, mild effect metal clad) re-classed as Division 1.4D in prescribed packagings, subject to certain special provisions.	7
SP7991	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of railroad flagging kits of specified construction, containing certain Class 1.4 and 4.1 materials, not subject to the HMR.	37
SP8006	Operational Highway/Rail/Shipper/Other.	Authorizes certain articles, explosive, n.o.s., Division 1.4 (toy caps) to be offered for transportation in commerce without labels.	3
SP9610	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of certain empty packagings containing residues of Class 1 smokeless powders without complete shipping papers and placarding.	11
SP9874	Operational Highway/Rail/Shipper/Other.	Authorizes use of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment, to observe the loading and/or unloading operations of hazardous materials from production control centers in lieu of personnel remaining within 25 feet of the cargo tanks.	1
SP10597	Operational Highway/Rail/Shipper/Other.	Authorizes manufacture, marking and sale of temperature controlled equipment for use in motor vehicles engaged in transportation in commerce of Class 3 liquids or Division 2.1 gases.	1
SP10705	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of packages containing acrolein, stabilized, Division 6.1, to be exempted from the segregation requirements, when shipped by highway.	2
SP10803	Operational Highway/Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of temperature controlled equipment for use in motor vehicles engaged in transportation of Class 3 and Class 2.1 materials.	1
SP10882	Operational Highway/Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of temperature controlled equipment for use in motor vehicles engaged in transportation of Class 3 and Class 2.1 materials.	1
SP11043	Operational Highway/Rail/Shipper/Other.	Authorizes transportation in commerce of Division 2.3 materials on the same transport vehicle with materials classed as Division 2.1, Class 3, Class 4, Class 5, and Class 8.	79

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders
SP11055	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials that meet the criteria for Division 6.1, PG I, Hazard Zone A in combination packages and provides relief from the segregation requirements.	8
SP11078	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain nickel-cadmium batteries each containing no more than 10 ml of liquid potassium hydroxide, a Class 8 material, as not subject to the HMR.	2
SP11151	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of combination packages containing hazardous wastes that are poisonous by inhalation, Division 6.1, PG I, Hazard Zone A, in the same transport vehicle with packages containing hazardous materials assigned to Class 3, Class 8 or Divisions 4.1, 4.2, 4.3, 5.1, 5.2.	1
SP11197	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce by private carrier of restricted quantities of hazardous materials that are authorized for exception in column 8A of the HMT, excluding Class 1, Class 7 and Divisions 6.1 and 6.2.	3
SP11202	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials across a public road, from one part of a plant to another, as essentially not subject to parts 172 and 173.	1
SP11352	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain Class 3, Class 8 and Class 9 hazardous materials across a public road, from one part of a plant to another, as essentially not subject to the hazard communication requirements of part 172.	3
SP11356	Operational Highway/Rail/ Shipper/Other.	Authorizes reassignment of certain high viscosity flammable liquids from Packing Group II to Packing Group III for packagings with a capacity greater than 30L.	3
SP11373	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of Division 4.2 (self-heating) materials in packing group II or III on the same transport vehicle with Class 8 liquids when the materials are appropriately separated.	29
SP11458	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of display packs of consumer commodity packages or limited quantities packages that exceed the 30 kg gross weight limit.	16
SP11470	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of shrink wrapped pallets containing boxes of waste ORM–D materials with the word ''WASTE'' marked on the outside of the pallet instead of on each individual box.	34
SP11666	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of green graphite products on open flatbed truck trailers, rail flat cars, intermodal freight containers, and when unitized by banding to wooden runners or pallets.	13
SP11811	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of various household wastes without having the quantity and unit measurement shown on the shipping paper during local pick-up operations.	4
SP11984	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain unapproved chemical oxygen generators with only one positive means of preventing unintentional actuation of the generator and without the required approval number marked on the outside of the package.	17
SP12002	Operational Highway/Rail/ Shipper/Other.	Authorizes unloading of tank cars containing Class 3 materials utilizing an alternate procedure to remove frozen liquid from bottom outlet valves.	1
SP12207	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials across a public road, from one part of a plant to another.	1
SP12306	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials across a public road, from a storage yard to a main plant, as not subject to the shipping paper and placarding requirements of the HMR.	1
SP13165	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials across public roads between company facilities, not subject to the shipping paper requirements of the HMR.	1
SP13190	Operational Highway/Rail/ Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading operations of anhydrous ammonia from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of cargo tank motor vehicles.	1
SP13199	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of reconditioned (''used'') refrigeration units under the provisions of § 173.306(e).	1
SP13343	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain wetted Division 1.1D explosive substances in heated cargo vehicles when they would likely freeze during transport.	1
SP13424	Operational Highway/Rail/ Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading and unloading operations of various hazardous materials from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of cargo tank motor vehicles.	2
SP13484	Operational Highway/Rail/ Shipper/Other.	Authorizes DOT specification MC 330, MC 331 and MC 338 cargo tank motor vehicles to be loaded with certain Division 2.2 liquefied gases using specially designed hoses in lieu of full time attendance by a qualified person during loading operations.	2

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders
SP13959	Operational Highway/Rail/ Shipper/Other.	Authorizes use of a video camera and monitor to observe the loading incidental to movement or unloading incidental to movement of anhydrous ammonia from a remote control room in place of personnel remaining within 25 feet of the cargo tank motor vehicle.	1
SP14141	Operational Highway/Rail/ Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading incidental to movement or unloading incidental to movement of certain Class 3, 8, and 9 materials in place of personnel remaining within 25 feet of a cargo tank motor vehicle.	1
SP14150	Operational Highway/Rail/ Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading and unloading operations of certain Class 3 and Class 8 hazardous materials from a remote control station in place of personnel remaining within 7.62 meters (25 feet) of cargo tank motor vehicles.	1
SP14335	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of Division 2.3 Zone A materials on the same motor vehicle with DOT specification packagings containing the residues of Divisions 2.1, 2.3, 4.3, 5.1, and Classes 3 and 8 materials.	3
SP14447	Operational Highway/Rail/ Shipper/Other.	Authorizes DOT specification cargo tank motor vehicles containing certain Division 2.2; 5.1; and 6.1; Class 3 and 8 hazardous materials to be loaded/unloaded using specially designed hoses in lieu being attended by a qualified person during loading and unloading operations.	1
SP14525	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain used diatomaceus earth filter material not subject to the HMR, except for shipping papers and certain marking requirements.	2
SP14618	Operational Highway/Rail/ Shipper/Other.	Authorizes manufacture, marking, sale, and use of temperature controlled equipment for use in motor vehicles engaged in the transportation in commerce of Class 3 liquids or Division 2.1 gases.	1
SP14680	Operational Highway/Rail/ Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading incidental to movement or unloading incidental to movement of spent sulfuric acid in place of personnel remaining within 25 feet of a cargo tank motor vehicle.	2
SP14726	Operational Highway/Rail/ Shipper/Other.	Authorizes manufacture, marking, sale, and use of temperature controlled equipment for use in motor vehicle transportation of Class 3 and Division 2.1 materials.	1
SP14822	Operational Highway/Rail/ Shipper/Other.	Authorizes use of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment, to observe the loading and unloading operations of hazardous materials from production control centers in lieu of personnel remaining within 25 feet of the cargo tanks.	1
SP14827	Operational Highway/Rail/ Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading incidental to movement or unloading incidental to movement of certain corrosive materials in place of personnel remaining within 25 feet of a cargo tank motor vehicle.	1
SP14840	Operational Highway/Rail/ Shipper/Other.	Authorizes use of video cameras and monitors to observe the loading incidental to movement or unloading incidental to movement of certain Class 8 materials in place of personnel remaining within 25 feet of a cargo tank motor vehicle.	1
SP14945	Operational Highway/Rail/ Shipper/Other.	Authorizes transportation in commerce of certain diesel fuel and environmentally hazardous substances, liquid, n.o.s. across a public road without shipping papers, marking, labeling or placarding.	1
		Non-Bulk Packaging Specifications/IBCs	
SP6614	Non-Bulk Packaging Specifications/IBCs.	Authorizes use of polyethylene bottles placed in a polyethylene crate for transportation in commerce of certain Class 8 corrosive materials (NA1760, UN3266, UN3264, UN3265, UN1791, UN1789, UN2796).	11
SP8230	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of Packing Group I and II nitric acids in certain combination packagings.	4
SP11602	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain Division 4.3 materials contained in sift-proof closed bulk packagings. Water reactive solid, n.o.s. (contains magnesium, magnesium nitrides) 4.3, UN2813, PG II or III.	11
SP12030	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of battery fluid, acid, packaged with a dry storage battery in a UN4G fiberboard box with a maximum gross weight not over 37.0 kg which exceeds the weight limitation.	1
SP12335	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain Division 1.1D and 1.4D detonating cords without the ends being sealed in alternative packaging.	8
SP12920	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain pyrophoric materials in a combination package consisting of UN1A2 outer package and a UN1A1 inner package.	19
SP13217	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of gasoline in non-DOT specification packages known as gasoline dispensers.	1
SP13548	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of lead acid batteries and packages of battery acid (with two different UN numbers) on the same vehicle.	125

TABLE 8—SPs SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders
SP13796	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of phosphorus, yellow, under water in alternate packaging.	1
SP14137	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain hydrochloric acid solutions in UN31H1 or UN31HH1 intermediate bulk containers (IBCs).	1
SP14213	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of UN1H1 plastic drums to be used for transportation in commerce of nitric acid with not more than 40% nitric acid.	1
SP15373	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, mark, sale and use of the specially designed combination packagings for transportation in commerce of certain Class 4.3 materials without hazard labels or placards, with quantity limits not exceeding 25 grams.	1

Not Suitable for Adoption

The analysis phase of the SPCP identified 1,070 SPs that were deemed not suitable for adoption. Table 9 summarizes the SPs deemed not suitable, their assigned topic area, a summary of the permit, the number of SP holders, and the corresponding denial code.

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION

Permit No.	Category	Summary	Holders	Code
		Cylinders General		
SP6626	Cylinders General	Authorizes a 10 year retest interval for certain DOT specification 3A or 3AA cylinders and ICC–3, 3A, or 3AA cylinders manufactured before December 31, 1945 for transportation in commerce of certain hazardous materials.	7	2
SP6691	Cylinders General	Authorizes 10 year requalification in accordance with§ 180.209(b) for cylinders manufactured on or before December 31, 1945.	16	2
SP6946	Cylinders General	Authorizes use of DOT specification 3A or 3AA cylinders and ICC–3, 3A, or 3AA cylinders manufactured before December 31, 1945 to be retested every 10 years instead of 5 years for transportation in commerce of certain compressed gases.	1	2
SP970	Cylinders General	Authorizes transportation in commerce of diborane in DOT specification 3AA cylinders overpacked in certain insulated drums or wooden boxes as specified.	3	3
SP2787	Cylinders General	Authorizes transportation in commerce of certain Division 2.2 gases in a non-DOT specification pressure vessel. The packaging prescribed is a non-DOT specification pressure vessel equipped with a regulating valve, a pressure relief valve, and a squib actuated valve. Accumulators must be packed in a strong wooden, metal, or polystyrene container or installed in a certain missile body section overpacked in a strong wooden, metal, or polystyrene container.	2	2
SP3004	Cylinders General	Authorizes use of prescribed non-DOT specification sampling cylinders having a capacity not exceeding 373 cubic inches (6 Liters). Each sampling cylinder must be equipped with a frangible disc safety device. The sampling cylinders must be packed in formed fiberglass cases, cushioned with resilient packing material in strong outside boxes such as, but not limited to, wood, fiberboard, plastic or aluminum.	10	3
SP3302	Cylinders General	Authorizes transportation in commerce of certain non-flammable gases in non-DOT specification sampling bottles (cylinders).	1	2
SP4052	Cylinders General	Authorizes transportation in commerce of an aerosol formulation pressurized with nitrogen in a DOT 39 specification cylinder.	1	4
SP4661	Cylinders General	Authorizes transportation in commerce of certain hazardous materials in 4BA240 and 4BW240 cylinders that have been tested and inspected using alternative retest procedures instead of the internal visual inspection and pressure retest specified in § 180.205(f) and (g) and the marking prescribed in § 180.213.	1	3
SP4844	Cylinders General	Authorizes transportation in commerce of oxygen in foreign manufactured non-DOT specification steel cylinders which are to be used as components in aircraft.	3	2
SP4884	Cylinders General	Authorizes transportation in commerce of certain Class 8 and Division 2.1, 2.2, 2.3 and 4.3 materials in non-DOT specification cylinders.	1	3
SP5600	Cylinders General	Authorizes transportation in commerce of samples of certain hazardous materials in non-DOT specification cylinders made to the DOT 3A specification, except Monel metal may be used rather than steel.	3	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP5967	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification cylinders conforming in part with DOT 3HT for shipment of a Division 2.2 gas. The packaging is a ''cool gas generator''.	2	2
SP6071	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming to all regulations applicable to DOT specification 4DA, except as specified.	1	2
SP6263	Cylinders General	Authorizes transportation in commerce of certain non-flammable gases in a non-DOT specification pressure vessel designed and constructed to the ASME Code.	1	2
SP6517	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification welded steel cylinders conforming with all regulations applicable to a DOT specification 4BW, except as specified, for transportation in commerce of acetylene.	1	2
SP6557	Cylinders General	Authorizes transportation in commerce of certain DOT-specification cylinders, used in the transportation of carbon dioxide and bromotrifluoromethane, to deviate from the requirements of the inspector's report.	27	3
SP6686	Cylinders General	Authorizes transportation in commerce of certain Division 2.1 gases in non-refillable steel cylinders made in compliance with DOT specification 39, except for the seams. Authorizes DOT 39 cylinders with brazed alloy seams.	2	3
SP6805	Cylinders General	Authorizes UN1953 (a Division 2.3 material) in 3A, 3AA and 3AAX manifolded cylinders.	4	3
SP6908	Cylinders General	Authorizes transportation in commerce of certain hazardous materials in non-DOT specification cylinders similar to DOT specification 39 cylinders.	1	3
SP7026	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification welded stainless steel cylinders conforming with DOT specification 4DS except for maximum charging pressure, material of construction, testing requirements and marking.	1	2
SP7413	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3E cylinder except as specified.	1	3
SP7458	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming in part with DOT specification 3E for shipment of certain hazardous materials (chlorine, UN1017; hydrogen chloride, UN1050; and those materials which are authorized for shipment in DOT specification 3E cylinders and that are compatible with the cylinders material of construction).	1	2
SP7477	Cylinders General	The prescribed packagings are certain non-DOT specification seamless aluminum cylinder in conformance with DOT-–3AL having a marked service pressure of 1800 psi 2015 psi, modified by enlarging the end opening.	3	2
SP7542	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4BW cylinder, except as specified, for acetylene, dissolved, UN1001.	1	2
SP7607	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder for transportation in commerce of hydrogen, compressed by passenger carrying aircraft. The packaging prescribed is a non-DOT specification seamless stainless steel cylinder of not more than 7.22 cubic inches water capacity and the cylinder is a component of a portable gas chromatograph.	1	3
SP7657	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification stainless steel cylinders conforming with all regulations applicable to a DOT specification 3E cylinder, except as specified.	1	2
SP7694	Cylinders General	Authorizes transportation in commerce of certain Division 2.2 gases in non-DOT specification cylinders made in compliance with DOT 39 with certain exceptions.	2	3
SP7708	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification small, high pressure cylinders of welded construction conforming with all regulations applicable to a DOT specification 3HT.	1	3
SP7721	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 39 cylinder, except smaller with higher pressure and steel used in DOT 3HT specification.	1	2
SP7737	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3E cylinder except that the packaging is made of aluminum and additional tests are required.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP7765	Cylinders General	The packaging prescribed is a limited life, non-DOT specification packaging, described as a missile gas storage system, consisting of a welded steel sphere, and an electric squib containing a Division 1.4 explosive.	1	3
SP7767	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4DS cylinder, except as specified, for transportation in commerce of compressed gas, n.o.s. (mixture of bromotrifluoromethane and nitrogen).	1	3
SP7774	Cylinders General	Authorizes transportation in commerce of bromine trifluoride in certain non-DOT specification cylinders.	3	3
SP7823	Cylinders General	Authorizes transportation in commerce of certain hazardous materials in non-DOT specification cylinders conforming to DOT specification 4BW.	5	2
SP7879	Cylinders General	Authorizes use of non-DOT specification cylinders similar to DOT 3E cylinders for transportation in commerce of bromine trifluoride.	1	3
SP7945	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming to all regulations applicable to DOT specification 4DS, except as specified, for transportation in commerce of compressed gas, n.o.s.	1	2
SP7954	Cylinders General	Authorizes transportation in commerce of certain compressed gases in manifolded DOT specification cylinders.	9	3
SP7971	Cylinders General	Authorizes use of non-DOT specification cylinders for transportation in commerce of a Division 2.2 compressed gas.	1	2
SP8009	Cylinders General	Authorizes use of a DOT 3AAX cylinder made of 4130X steel for the transport of methane, compressed or natural gas, compressed (with a high methane content).	7	2
SP8013	Cylinders General	Authorizes use of DOT specification 4E cylinders for transportation in commerce of certain Division 2.1, 2.2 and 2.3 gases.	3	3
SP8131	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification pressure vessels for the shipment of oxygen, compressed, Division 2.2.	1	2
SP8156	Cylinders General	Authorizes use of DOT specification 39 cylinders up to 225 cubic inches in volume for transportation in commerce of certain flammable or non-flammable compresses gases and carbon disulfide.	10	3
SP8178	Cylinders General	Authorizes use of non-DOT specification cylinders for transportation in commerce of oxygen, compressed.	1	3
SP8220	Cylinders General	Authorizes use of non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3HT cylinder, except as specified, for transportation in commerce of air, compressed and nitrogen compressed.	1	3
SP8221	Cylinders General	Authorizes use of non-DOT specification, high pressure cylinders of welded construction for military missile systems use only for transportation in commerce of air, compressed and nitrogen, compressed.	1	2
SP8239	Cylinders General	Authorizes use of non-DOT specification containers for transportation in commerce of boron trifluoride, compressed.	1	2
SP8255	Cylinders General	Authorizes use of a non-reusable (non-refillable) non-DOT specification welded steel cylinder conforming with all regulations applicable to a DOT specification 39 cylinder, except as specified, for transportation in commerce of air, compressed; argon, compressed; helium, compressed; and nitrogen, compressed.	1	2
SP8299	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming to all regulations applicable to a DOT specification 3HT for transportation in commerce of helium, compressed and nitrogen, compressed.	1	3
SP8439	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming to all regulations applicable to a DOT specification 4DS for transportation in commerce of UN1009, UN1956.	1	3
SP8495	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming to all regulations applicable to a DOT 4DS cylinder for transportation in commerce of UN1044, UN1956, UN3163.	1	2
SP8561	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming with all requirements for a DOT 3HT for transportation in commerce of oxygen, compressed.	1	3
SP8720	Cylinders General	Authorizes use of a non-DOT specification welded high-pressure, non-reusable cylinder in military weapons systems only for transportation in commerce of helium, compressed.	1	3
SP8750	Cylinders General	Authorizes use of non-DOT specification small, high pressure cylinders of welded construction for military weapons systems use, conforming with all regulations applicable to a DOT specification 3HT cylinder except as specified, for transportation in commerce of air, compressed and nitrogen, compressed.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP8757	Cylinders General	Authorizes use of non-DOT specification stainless steel cylinders conforming with all regulations applicable to a DOT specification 3A cylinder except as specified, for transportation in commerce of various Division 2.1, 2.2 and 2.3 gases and Class 3 material.	1	2
SP8795	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4B240ET, except as specified for transportation in commerce of UN1009 and UN1044.	1	3
SP8842	Cylinders General	Authorizes use of non-DOT specification small, high pressure cylinders of welded construction similar to DOT specification 3HT for aircraft use or military weapons systems only, to be used for the transportation in commerce of nitrogen, compressed.	1	3
SP8843	Cylinders General	Authorizes transportation in commerce of bromine trifluoride in non-DOT specification cylinders.	1	2
SP8915	Cylinders General	Authorizes transportation in commerce of certain manifolded DOT specification cylinders containing Division 2.1 and 2.2 gases.	14	5
SP8920	Cylinders General	Authorizes use of non-DOT specification welded, high pressure non-refillable cylinders in military weapons systems only for transportation in commerce of air, compressed; argon, compressed; helium, compressed; and nitrogen, compressed.	1	2
SP8927	Cylinders General	Authorizes transportation in commerce of helium, compressed in non-DOT specification, small, high pressure spheres of welded construction, in full compliance with DOT specification 3HT, except as specified, for military weapons use only.	1	2
SP8962	Cylinders General	Authorizes use of non-DOT specification pressure vessels conforming to all regulations applicable to a DOT specification 3HT except as specified for the transportation in commerce of nitrogen, compressed.	1	3
SP8971	Cylinders General	Authorizes transportation in commerce of bromine trifluoride in certain non-refillable, non-DOT specification cylinders of equal or greater integrity than those currently authorized.	4	2
SP8990	Cylinders General	Authorizes transportation in commerce of a non-DOT specification cylinder containing certain Division 2.1 and 2.2 gases. The prescribed packaging is a non-DOT specification non-refillable steel inside cylinder and fabricated in conformance with DOT specification 39 cylinder.	1	2
SP9001	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT 3T specification cylinder, except as specified, for transportation in commerce of UN1002, UN1006, UN1008, UN1013, UN1962, UN1046, UN1971, UN1065, UN1066, UN1070, and UN1072.	24	2
SP9034	Cylinders General	Authorizes use of DOT specification 3AL cylinders subject to certain limitations and requirements for transportation in commerce of certain gases or gas mixtures.	9	5
SP9036	Cylinders General	Authorizes use of billet pierced DOT 3AA cylinders that are made from parted billets which are not inspected by an independent inspector after parting. The cylinders are authorized for transportation in commerce of compressed or liquefied gases in Division 2.1 and 2.2 (flammable and non-flammable) and poisonous gases in Division 2.3 for which DOT 3AA cylinders are authorized in part 173.	1	2
SP9221	Cylinders General	Authorizes use of non-DOT specification stainless steel cylinders which are part of a military weapons system to be used for transportation in commerce of nitrogen, argon or helium.	1	2
SP9295	Cylinders General	Authorizes use of a non-DOT specification toroidal pressure vessel conforming with all regulations applicable to a DOT 39 cylinder, except as specified, for the transportation in commerce of air, compressed; argon, compressed; nitrogen, compressed; and helium, compressed.	1	3
SP9347	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3E cylinder, except as specified, for the transportation in commerce of UN1203, UN1228, UN1267, UN1268, NA1270, UN1075, UN1978, UN1077, UN1971, UN1046, and UN1066.	1	3
SP9370	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder complying in part with the DOT 3T specification for transportation in commerce of those hazardous materials authorized in DOT 3T cylinders.	2	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP9386	Cylinders General	Authorizes use of non-DOT specification welded stainless steel cylinder conforming with all regulations applicable to a DOT specification 3HT cylinder, except as specified, for transportation in commerce of nitrogen, compressed.	1	3
SP9393	Cylinders General	Authorizes use of a non-DOT specification, non-refillable cylinder for use in transporting certain Division 2.2 gases (UN1018, UN1956 and various 2.2 refrigerant gases).	1	3
SP9408	Cylinders General	Authorizes use of DOT 3AAX cylinders for transportation in commerce of silicon trifluoride. The packaging prescribed is a DOT specification 3AAX cylinder manufactured from alloy steel with minimum service pressure of 2200 psi. The cylinders arearranged in ISO modules.	1	2
SP9421	Cylinders General	Authorizes use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT–3AA specification cylinder, except as specified, for the transportation in commerce of gases or mixtures of gases authorized in the HMR to be shipped in DOT–3AA specification cylinders.	2	3
SP9450	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming with all regulations applicable to a DOT specification 4BW cylinder, except as specified, for transportation in commerce of Division 2.1 and Division 2.2 compressed or liquefied gases authorized in DOT 4BW cylinders.	1	3
SP9478	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3AL cylinder for transportation in commerce of fire extinguishers (with bromotrifluoromethane, 2.2, UN1044).	1	3
SP9491	Cylinders General	Authorizes use of 3AL cylinders for transportation in commerce of UN1984 and UN2193. The liquid portion of trifluoromethane (UN1984) may completely fill the cylinder at or below 130 °F, provided the pressure at the critical temperature does not exceed one and one-fourth times the service pressure.	2	5
SP9508	Cylinders General	Authorizes transportation in commerce of certain Division 4.3 materials in DOT specification 4BW240 cylinders that are visually inspected externally instead of the required hydrostatic retest.	3	2
SP9609	Cylinders General	Authorizes manufacture, marking, sale and use of certain non-DOT specification pressure vessel, conforming with all regulations applicable to DOT specification 39, except as specified, for transportation in commerce of air, compressed; argon, compressed, helium, compressed; and nitrogen, compressed.	1	2
SP9706	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT–3AA specification cylinder, except as specified, for transportation in commerce of certain Division 2.1, 2.2 or 2.3 materials authorized to be shipped in a DOT 3AA specification cylinder.	2	3
SP9729	Cylinders General	Authorizes transportation in commerce of certain corrosive materials (UN1732 and UN2495) in DOT specification 4BW cylinders manufactured with an alternative material of construction (stainless steel).	2	3
SP9761	Cylinders General	Authorizes manufacture, marking, sale and use of cylinders similar to the DOT specification 4DS cylinder, except the material is constructed of an alternative stainless steel.	1	3
SP9778	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification packagings (a specification equivalent to the DOT 3A seamless steel cylinder) containing the materials (sulfur hexafluoride, UN1080; radioactive material, excepted package-articles, UN2911; radioactive material, excepted package-articles, UN2910) which also contain an electronic device containing a small amount of radioactive material.	1	2
SP9790	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming with DOT 4L specification except that the container is made of Type 316L stainless steel for transportation of Class 2.2 gases (UN1877, nitrogen, refrigerated liquid).	1	2
SP9791	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming in part with the DOT–3AA specification, for use in transportation in commerce of certain non-flammable, non-liquefied compressed gases.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP9830	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4BA cylinder, except as specified, for transportation in commerce of Division 2.1 and 2.2 material authorized in DOT 4BA cylinders, Class 3, Division 6.1 and Class 8 materials authorized in DOT 4BA cylinders.	1	3
SP9880	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification containers described as hermetically-sealed electron tube devices for the transportation in commerce of UN1006, UN1013, UN1046, UN1056, UN1065, UN1066, UN1956, UN1982, and UN2036.	1	5
SP9884	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with DOT specification 4L except as specified, for transportation in commerce of oxygen, refrigerated liquid.	1	3
SP9909	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT–3AA specification cylinder, except as specified for transportation in commerce of gases or mixtures of gases authorized in the HMR to be shipped in DOT–3AA specification cylinders.	3	3
SP9998	Cylinders General	Authorizes use of seamless steel hydraulic accumulators having a capacity of not more than 15 gallons, with a design pressure not exceeding 6,000 psig designed and fabricated in full compliance with Section VIII of the ASME Code for transportation in commerce of compressed nitrogen, UN1066 a Division 2.2 material.	1	3
SP10047	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT–3AA specification cylinder, except as specified, for transportation in commerce of gases or mixtures of gases authorized in the HMR to be shipped in DOT–3AA specification cylinders.	2	3
SP10064	Cylinders General	Authorizes manufacture, marking, sale and use of a non-refillable, non-DOT specification cylinder for transportation in commerce of air, compressed, UN1002; argon, compressed, UN1006; helium, compressed, UN1046; and nitrogen, compressed, UN1066.	1	3
SP10066	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming with all regulations applicable to a DOT Specification 39 cylinder, except as specified, for transportation in commerce of compressed gas, n.o.s. (carbon dioxide with a helium gas mixture); and life-saving appliances, self-inflating.. The non-DOT specification cylinder may be transported by itself or incorporated into a self-inflating life raft assembly.	1	3
SP10180	Cylinders General	Authorizes manufacture, marking, sale and use of DOT specification cylinders, except they are equipped with pressure relief device systems other than as prescribed by the HMR, to be used for transportation in commerce of certain Division 2.2 materials.	1	2
SP10184	Cylinders General	Authorizes transportation in commerce of specific gas mixtures that are commercially free of corroding components in DOT specification 4B, 4BA or 4BW cylinders that are retested in accordance with § 180.209(e) and (g).	4	2
SP10232	Cylinders General	Authorizes manufacture, marking, sale, and use of a non-DOT specification packaging conforming in part with the DOT specification 2Q, except as specified, for transportation in commerce of UN1078, refrigerant gases, n.o.s. and UN3159, 1,1,1,2-tetrafluoroethane.	1	2
SP10279	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification steel water pump system tank with an outside diameter not exceeding 26 inches for the transportation of certain materials (UN1002, air, compressed; UN1066, nitrogen, compressed).	1	2
SP10319	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification pressure vessels (water pump system tank) for use in the transportation of certain Division 2.2 materials (UN1956, compressed gas; UN1066, nitrogen compressed).	1	2
SP10320	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4BW cylinder, except as specified, for transportation in commerce of certain hazardous materials. The packaging as specified is comparable to DOT specification 8AL except for the steel shell.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP10326	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3HT cylinder, except as specified, for transportation in commerce of helium, compressed, UN1046.	1	2
SP10370	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification aluminum cylinders conforming with all regulations applicable to a DOT specification 3E cylinder, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP10395	Cylinders General	Authorizes manufacture, marking, sale and use of a DOT specification 4L cylinder to be used for transportation in commerce of methane, refrigerated liquid, Division 2.1.	1	2
SP10424	Cylinders General	Authorizes transportation in commerce of a specific gas mixture in DOT specification 4BA240 cylinders retested in accordance with the provisions of § 180.209(e).	3	2
SP10440	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4DS cylinder, except as specified, for transportation in commerce of various Division 2.2 gases.	1	2
SP10511	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification stainless steel cylinders containing sulfur hexafluoride (SF6) classed as a Division 2.2 material.	2	2
SP10555	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4B cylinder.	1	2
SP10590	Cylinders General	Authorizes manufacture, marking, sale, and use of a non-DOT specification inside container, conforming with all regulations applicable to a DOT specification 2P, with the exception of the diameter and capacity, to be used for transportation in commerce of certain Division 2.1 gases.	1	2
SP10603	Cylinders General	Authorizes transportation in commerce of a non-DOT specification cylinder conforming with all regulations applicable to a DOT 3AA specification cylinder, except as specified, for transportation in commerce of certain non-liquefied compressed gases, or mixtures of such compressed gases, which are authorized in the HMR to be transported in DOT 3AA specification cylinders.	3	3
SP10646	Cylinders General	Authorizes transportation in commerce of flammable gases in a non-DOT specification cylinder.	1	2
SP10677	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification non-refillable inside container conforming with all regulations applicable to a DOT specification 2P inner non-refillable metal receptacle, except as specified, for transportation in commerce of UN1075 and UN2037.	1	2
SP10698	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4B, except as specified, for transportation in commerce of a Division 2.2 gas.	1	3
SP10776	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3E cylinder, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP10785	Cylinders General	Authorizes the manufacture, marking, sale and use of non-DOT specification cylinders containing certain Divisions 2.2 and 2.3 gases to be transported in radiation detectors rather than in DOT specification cylinders.	1	3
SP10788	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming to a DOT specification 39 cylinder, except as specified, for transportation in commerce of Division 2.1 and Division 2.2 gases authorized in DOT 39 cylinders.	1	3
SP10802	Cylinders General	Authorizes transportation in commerce of carbon monoxide and gas mixtures containing carbon monoxide in DOT specification 3AL cylinders charged to a pressure of 3,000 psig or less.	3	5
SP10850	Cylinders General	Authorizes transportation in commerce of certain cylinders subjected to a complete external visual inspection in lieu of the periodic hydrostatic retest.	1	3
SP10865	Cylinders General	Authorizes the rebuilding and selling of DOT specification 4B, 4BA and 4BW cylinders in accordance with certain procedures , for use in transportation of compressed gases, flammable liquids, corrosive materials and other hazardous material that are authorized to be shipped in DOT 4B, 4BA, and 4BW cylinders.	1	5

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP10867	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming to all regulations applicable to a DOT specification 3HT cylinder, except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP10869	Cylinders General	Authorizes manufacture, marking, sale, and use of a non-DOT specification cylinder which is constructed in conformance with all regulations applicable to a DOT specification 3AA cylinder.	1	2
SP10898	Cylinders General	Authorizes transportation in commerce of a Division 2.2 material (nitrogen) in diaphragm, bladder and piston type accumulators.	13	3
SP10914	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3HT cylinder for transportation in commerce of helium, compressed, UN1046.	1	3
SP10964	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4DS cylinder, except as specified, for transportation in commerce of compressed gas, n.o.s. (bromotrifluoromethane and nitrogen), UN1956.	1	3
SP11025	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming with all regulations applicable to a DOT specification 3HT cylinder, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP11032	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification, non-refillable cylinder conforming with all regulations applicable to a DOT specification 39 cylinder, except as specified, for transportation in commerce of oxygen, compressed, UN1072.	1	3
SP11044	Cylinders General	Authorizes transportation in commerce of up to 11.35 kg (25 pounds) of an organic phosphate compound (2,2 dichlorovinyl dimethylphosphate) in a DOT specification 4BA240, 4BW240, 3A and 3AA cylinder equipped with an eduction (dip) tube.	1	2
SP11054	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification stainless steel cylinders conforming with all regulations applicable to a DOT specification 3A cylinder, except as specified.	1	2
SP11057	Cylinders General	Authorizes use of a non-DOT specification cylinder for transportation in commerce of UN1956, Helium.	1	3
SP11147	Cylinders General	Authorizes transportation in commerce of aircraft safety equipment which utilizes non-DOT specification cylinders containing certain compressed gases, Division 2.2.	1	2
SP11173	Cylinders General	Authorizes transportation in commerce of certain hazardous materials in non-DOT specification stainless steel cylinders conforming, in part, with the specifications for a DOT 4BW cylinder.	4	2
SP11262	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4L cylinder, except as specified, for transportation in commerce of oxygen, refrigerated liquid.	1	3
SP11289	Cylinders General	Authorizes manufacture, marking, sale and use of DOT specification 39 cylinders which deviate from the visual inspection requirements.	1	2
SP11323	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders for transportation in commerce of hazardous materials authorized in DOT specification 39 cylinders.	1	3
SP11360	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification pressure vessels containing compressed hydrogen, which are component parts of a nickel-hydrogen battery.	2	2
SP11378	Cylinders General	Authorizes use of stainless steel non-DOT specification cylinders conforming to all regulations applicable to DOT specification 4BW, except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP11379	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification pressure vessels for use as components of safety systems and explosive articles. The pressure vessels, charged with non-toxic, non-liquefied gases, are authorized for transportation in commerce.	1	2
SP11380	Cylinders General	Authorizes transportation in commerce of certain Division 2.1 gases in non-DOT specification cylinders.	1	2
SP11383	Cylinders General	Authorizes transportation in commerce of certain hazardous materials in non-DOT specification stainless steel cylinders conforming to all regulations applicable to DOT specification 4BW.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP11394	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4BA cylinder, except as specified, for transportation in commerce of the materials authorized for transportation in DOT specification 4BA cylinders.	1	3
SP11447	Cylinders General	Authorizes transportation in commerce of a gas purification apparatus containing certain Division 4.1 (flammable solids) and Division 4.2 (spontaneously combustible solids) in non-DOT specification stainless steel pressure vessels.	3	2
SP11487	Cylinders General	Authorizes transportation in commerce of certain cylinder (bottle) assemblies containing Division 2.1 and Division 2.2 materials.	1	2
SP11494	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification pressure vessels for use as components of automobile vehicle safety systems (such as airbag inflators).	1	2
SP11506	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders (pressure vessels) for use as components of automobile vehicle safety systems. These pressure vessels may be charged with non-toxic, non-liquefied gases, or mixtures thereof and are authorized for transportation in commerce.	1	2
SP11536	Cylinders General	Authorizes transportation in commerce of certain hazardous materials in non-DOT specification packagings (spacecraft) and limited quantities of Division 1.4S and 1.4C explosives secured within the spacecraft.	1	2
SP11548	Cylinders General	Authorizes transportation in commerce of certain solid polymer catalysts classified as Class 8, Division 4.1, Division 4.2, Division 4.3, and Division 6.1 in DOT specification cylinders except specification 8 and 3HT.	2	3
SP11580	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification stainless steel cylinders conforming to all regulations applicable to DOT specification 4BW.	1	2
SP11592	Cylinders General	Authorizes the manufacture, marking, sale and use of a non-DOT specification steel water pump system tank that exceeds the prescribed maximum outside diameter and wall stress used for transportation in commerce of compressed air or nitrogen.	1	2
SP11598	Cylinders General	Authorizes manufacture, marking, sale and use of DOT specification cylinders equipped with pressure relief device systems other than as prescribed to be used for transportation in commerce of certain Division 2.2 materials.	1	2
SP11620	Cylinders General	Authorizes manufacture, marking, sale and use of certain non-DOT specification inside metal containers conforming with all regulations applicable to a DOT specification 2Q inner non-refillable metal receptacle, except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP11644	Cylinders General	Authorizes manufacture, marking, sale and use of a non-refillable non-DOT specification inside metal container conforming in part with the DOT specification 2Q, for transportation in commerce of certain refrigerant gases.	1	2
SP11650	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification pressure vessels for use as components of automobile vehicle safety systems. The pressure vessels, charged with non-toxic, non-liquefied gases, are authorized for transportation in commerce subject to requirements and limitations specified.	1	3
SP11692	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming in part with DOT specification 3AA to be used for transportation in commerce of certain hazardous materials.	1	3
SP11721	Cylinders General	Authorizes manufacture, marking, sale and use of DOT specification 39 cylinders which deviate from the visual inspection requirements.	1	3
SP11722	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification spherical pressure vessels containing Division 2.1, 2.2 and 2.3 compressed gases.	1	2
SP11725	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification containers containing certain Division 2.1, 2.2, 2.3 liquefied and compressed gases and other hazardous materials for use in specialty cooling applications such as satellites and military aircraft.	6	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP11770	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming with all regulations applicable to a DOT specification 3E cylinder, except as specified, for transportation in commerce of those materials authorized in DOT specification 3E cylinders.	1	2
SP11777	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification pressure vessels for use as components of automobile vehicle safety systems.	1	4
SP11780	Cylinders General	Authorizes manufacture, marking, sale and use of certain x-ray systems containing sulfur hexafluoride for transportation in commerce.	1	2
SP11782	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification pressure vessel conforming to the American Society of Mechanical Engineers (ASME) pressure vessel codes and standards, for transportation in commerce of a Division 4.2 material.	1	2
SP11791	Cylinders General	Authorizes transportation in commerce of a Division 2.1 material in a DOT specification 2Q non-refillable inner container which exceeds the authorized maximum charging pressure.	1	3
SP11859	Cylinders General	Authorizes manufacture, marking, sale and use of a missile gas storage system consisting of a non-DOT specification cylinder equipped with a pyrotechnic pressure relief device for transportation in commerce of nitrogen.	1	2
SP11914	Cylinders General	Authorizes transportation in commerce of a Division 2.1 material in a non-refillable, non-DOT specification inside container conforming in part with DOT specification 2P.	1	3
SP11917	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification, non-refillable, foam-filled cylinder conforming with all regulations applicable to a DOT specification 39 cylinder, except as specified, for transportation in commerce of certain hazardous materials. The prescribed packaging is a non-DOT specification, non-refillable steel cylinder consisting of a seamless shell with the bottom attached by a mechanical seam. The finished cylinder will contain a block of reticulated polyurethane foam that approximately fills the inside void of the cylinder and absorbs the gas into its cell structure.	1	2
SP11952	Cylinders General	Authorizes transportation in commerce of certain pressure metal containers containing limited quantities of compressed nitrogen.	2	2
SP11990	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification oil well sampling cylinders conforming with all regulations applicable to a DOT specification 3A cylinder, except as specified, for the transportation in commerce of certain hazardous materials.	2	3
SP11993	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders (pressure vessels) for use as components for safety systems and explosives articles.	1	2
SP12005	Cylinders General	Authorizes transportation in commerce of xenon gas in a non-DOT specification composite cylinder which is part of the International Space Station.	1	2
SP12007	Cylinders General	Authorizes transportation in commerce of DOT specification cylinders authorized for chloropicrin, for use by licensed fumigators, with closures that deviate from that required by the HMR.	3	2
SP12009	Cylinders General	Authorizes transportation in commerce of anhydrous ammonia in DOT specification cylinders being shipped to a disposal facility.	16	3
SP12014	Cylinders General	Authorizes transportation in commerce of certain reconditioned refrigeration units under the provisions of § 173.306(e).	1	2
SP12038	Cylinders General	Authorizes transportation in commerce of certain DOT specification 2Q containers containing liquefied petroleum gas.	1	3
SP12067	Cylinders General	Authorizes transportation in commerce of compressed gases, n.o.s., Division 2.2 materials, in a non-DOT specification pressure vessel used as a component in an aircraft evacuation slide.	1	3
SP12068	Cylinders General	Authorizes transportation in commerce of certain hazardous materials contained in a certain launch vehicle with and without a payload.	1	3
SP12079	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming in part with the DOT–3AA specification, except as specified, for transportation in commerce of certain hazardous he materials.	1	3
SP12087	Cylinders General	Authorizes manufacture, marking, sale and use of non-refillable, non-DOT specification cylinders for transportation in commerce of boron trifluoride. The cylinders are described as electron tubes that are part of radiation detectors.	1	4

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP12092	Cylinders General	Authorizes transportation in commerce of certain Division 4.3 materials in DOT specification 4BW cylinders which are visually inspected externally instead of the required hydrostatic retest.	1	2
SP12098	Cylinders General	Authorizes manufacture, marking, sale and use of a limited life, non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3HT cylinder for transportation in commerce of UN1072 and UN1980.	1	3
SP12112	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification cylinders which are used as components (fire extinguishers) in aircraft of foreign manufacture.	3	2
SP12116	Cylinders General	Authorizes transportation in commerce of certain hazardous materials, in non-DOT specification cylinders used for oil well sampling.	2	2
SP12122	Cylinders General	Authorizes manufacture, marking, sale, and use of non-DOT specification pressure vessels for use as components of automobile vehicle safety systems. The pressure vessels, charged with non-toxic, non-liquefied gases, or mixtures thereof, are authorized for transportation as specified.	1	3
SP12135	Cylinders General	Authorizes manufacture, marking, sale, and use of non-DOT specification cylinders (pressure vessels) for use as components of automobile vehicle safety systems.	1	2
SP12155	Cylinders General	Authorizes transportation in commerce of a non-DOT specification pressure vessel containing sulfur hexafluoride which is a component of an electric utility circuit interrupter unit.	1	3
SP12178	Cylinders General	Authorizes transportation in commerce of certain Division 2.1 gases in a DOT 2Q container.	1	3
SP12187	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 39 cylinder, except as specified, for transportation in commerce of certain refrigerant gases; UN1956.	1	3
SP12196	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification stainless steel alloy cylinder conforming with all regulations applicable to a DOT specification 3AA cylinder, except as specified. The packaging prescribed is a welded non-DOT specification cylinder having a maximum capacity of 50 cubic inches, constructed of 15–5 precipitation hardened (PH) stainless steel.	1	3
SP12222	Cylinders General	Authorizes manufacture, marking, sale and use of a DOT specification 39 cylinder for transporting carbon dioxide (Division 2.2) with a maximum permitted filling density of 75 percent.	1	3
SP12274	Cylinders General	Authorizes transportation in commerce of Division 2.1 materials in a non-refillable, non-DOT specification inside container conforming in part with DOT specification 2P.	1	3
SP12297	Cylinders General	Authorizes manufacture, marking, sale and use of eight (8) non-DOT specification spherical pressure vessels conforming with all regulations applicable to a DOT specification 4DS cylinder, except as specified, for transportation in commerce of nitrogen, compressed, Division 2.2 under the terms and conditions specified.	1	3
SP12303	Cylinders General	Authorizes transportation in commerce of certain Division 2.1, 2.2 and Class 3 materials in a non-DOT specification cylinder used for oil well sampling.	1	2
SP12334	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification stainless steel cylinder conforming with all regulations applicable to a DOT specification 3A cylinder, except as specified, for transportation in commerce of certain compressed gases.	1	2
SP12341	Cylinders General	Authorizes transportation in commerce of a certain space satellite assembly containing non-DOT specification pressure vesselspressurized with certain Division 2.2 materials.	1	2
SP12384	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification hydraulic accumulators containing compressed nitrogen.	2	3
SP12391	Cylinders General	Authorizes transportation in commerce of certain Division 2.1 and 2.2 gases, in ICC specification 3, 3A or 3AA cylinders manufactured on or before December 31, 1945, and which have been retested at least every 10 years.	7	2
SP12398	Cylinders General	Authorizes transportation in commerce of certain DOT specification 3A and 3AA cylinders equipped with alternative pressure relief devices and containing at least 165 pounds of certain hazardous materials.	1	5
SP12405	Cylinders General	Authorizes transportation in commerce of certain hazardous materials in certain DOT specification seamless steel cylinders. UN1050, UN2193 and UN1080 is authorized for transportation in liquid full DOT specification 3A, 3AA, 3AX, 3AAX, or 3T cylinders.	5	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP12431	Cylinders General	Authorizes transportation in commerce of non-DOT specification cylinders conforming with all regulations applicable to a DOT 4BA specification, except as specified, for transportation in commerce of certain Division 2.2 materials.	2	3
SP12448	Cylinders General	Authorizes transportation in commerce of anhydrous ammonia in DOT specification cylinders which are not authorized by the HMR for transportation of anhydrous ammonia.. The cylinders are being transported to a disposal facility	1	2
SP12479	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification fiberglass hoop wrapped cylinders for transportation in commerce of certain hazardous materials. The cylinders are authorized for self-contained underwater breathing apparatus (SCUBA) use.	1	2
SP12499	Cylinders General	Authorizes intrastate transportation in commerce of liquefied petroleum gas in certain non-DOT specification cargo tanks.	1	2
SP12506	Cylinders General	Authorizes transportation in commerce of fifteen non-DOT specification cylinders conforming with all regulations applicable to a DOT specification 4DS cylinder, except as specified, for transportation in commerce of bromotrifluoromethane under the terms and conditions specified.	1	2
SP12521	Cylinders General	Authorizes transportation in commerce of certain DOT specification and cylinders manufactured to a foreign specification which are charged for export only.	1	2
SP12526	Cylinders General	Authorizes manufacture, marking, sale and use of a gas purification apparatus containing a non-DOT specification stainless steel pressure vessel for transportation in commerce of certain hazardous materials.	1	3
SP12531	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 4BW cylinder, except as specified for transportation in commerce of certain hazardous materials.	1	3
SP12532	Cylinders General	Authorizes manufacture, marking, sale and use of a non-refillable, non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 39 cylinder, except as specified, for transportation in commerce of helium. Each cylinder is equipped with a pyrotechnic relief device and is part of a gas storage system.	1	3
SP12562	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification non-refillable inside container conforming with all regulations applicable to a DOT specification 2P inner non-refillable metal receptacle except for size, testing requirements, and marking as specified, for transportation in commerce of certain hazardous materials.	1	3
SP12571	Cylinders General	Authorizes transportation in commerce of nitrogen trifluoride and nitrogen trifluoride mixtures in certain DOT specification cylinders that are not equipped with pressure relief devices.	5	2
SP12580	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification foreign cylinders which are charged for export only.	1	3
SP12589	Cylinders General	Authorizes transportation in commerce of tungsten hexafluoride in certain DOT 3BN specification cylinders that previously contained hydrogen fluoride.	1	2
SP12599	Cylinders General	Authorizes transportation in commerce of silicon tetrafluoride, Division 2.3, in certain manifolded DOT specification 3AA and 3AAX cylinders.	1	3
SP12643	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification refrigeration systems described as pulse tube coolers containing helium.	1	2
SP12679	Cylinders General	Authorizes manufacture, marking, sale and use of a non-refillable, non-DOT specification steel cylinder conforming with all regulations applicable to a DOT specification 39 cylinder, except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP12716	Cylinders General	Authorizes transportation in commerce of certain DOT specification 3AAX cylinders containing chlorine.	1	3
SP12726	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification and DOT-4DA and 4DS specification cylinders, used as fire suppression systems in aircraft to be shipped, as fire extinguishers.	18	2
SP12783	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification, non-refillable, containers containing certain Division 2.2 materials, classed as ORM–D.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP12818	Cylinders General	Authorizes transportation in commerce of certain foreign manufactured non-DOT specification steel cylinders which are used as components (fire extinguishers) in aircraft.	5	3
SP12855	Cylinders General	Authorizes one-way transportation in commerce by highway motor vehicle of non-DOT specification pressure vessels (stainless steel heat and/or carbon steel heat exchangers) containing the residue of a Class 3 material.	1	3
SP12865	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders and cylinders manufactured to a foreign specification which are charged for export only.	1	3
SP12866	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification cylinders containing a Division 2.2 material, manufactured in accordance with DOT specification 3HT that have been marked with a steel stamp other than the low stress stamp required by the HMR.	1	3
SP12868	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders and cylinders manufactured to a foreign specification which are charged for export only.	1	3
SP12869	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders and cylinders manufactured to a foreign specification which are charged for export only.	1	3
SP12899	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3A cylinder, except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP12929	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders manufactured to a foreign specification which are charged for export only.	6	3
SP12955	Cylinders General	Authorizes transportation in commerce of non-DOT specification fiber reinforced plastic (FRP), full composite (FC), compressed gas cylinders which are used as components in aircraft.	8	3
SP12972	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders and non-DOT specification cylinders manufactured to a foreign specification which are charged for export only.	1	3
SP12994	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders and non-DOT specification cylinders manufactured to a foreign specification which are charged for export only.	3	3
SP13032	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification, non-refillable, composite pressure vessels for transportation in commerce of certain hazardous materials.	1	2
SP13036	Cylinders General	Authorizes transportation in commerce of DOT specification 3E cylinders containing hydrogen in metal hydride as an integral part of a hydrogen maser (atomic clock).	1	3
SP13107	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders as part of a Portable Emission Measurement System, that release a controlled amount of certain Division 2.1 materials during transportation under the terms and conditions specified.	1	3
SP13112	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification, non-refillable pressure vessels for transportation in commerce of certain hazardous materials.	1	3
SP13135	Cylinders General	Authorizes transportation in commerce of a certain space satellite assembly containing non-DOT specification pressure vessels pressurized with certain Division 2.2 materials up to 2,000 psig.	1	3
SP13163	Cylinders General	Authorizes transportation in commerce of certain infectious substances in special packagings.	1	3
SP13167	Cylinders General	Authorizes transportation in commerce of cylinders authorized under SP 11725 which contain anhydrous ammonia and are installed in a device as part of an environmental conditioning system.	2	3
SP13182	Cylinders General	Authorizes transportation in commerce of phosphine in certain DOT specification and non-DOT specification cylinders.	3	3
SP13201	Cylinders General	Authorizes transportation in commerce of certain fire extinguisher tubes containing liquefied gas that exceed the prescribed size limitations.	1	2
SP13220	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification welded pressure vessels containing certain compressed gases and liquid adsorbed onto a microporous substrate.	1	3
SP13229	Cylinders General	Authorizes transportation in commerce of phosphine in certain DOT specification and non-DOT specification cylinders.	3	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP13230	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming with all regulations applicable to a DOT specification 3AA or 3AAX cylinder except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP13232	Cylinders General	Authorizes manufacture, marking, sale and use of cylinders conforming with all regulations applicable to a DOT specification 3AA, 3AAX and DOT 3T cylinders except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP13249	Cylinders General	Authorizes transportation in commerce of sodium in DOT specification 4BW240 or DOT-4BW260 cylinders that are visually inspected externally instead of the required hydrostatic requalification.	1	2
SP13250	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification fully wrapped carbon fiber reinforced brass lined cylinders for transportation in commerce of certain hazardous materials.	1	2
SP13259	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming with all regulations applicable to a DOT specification 3E cylinder, except as specified, for transportation in commerce of those materials authorized in DOT specification 3E cylinders.	1	3
SP13269	Cylinders General	Authorizes one-way transportation in commerce of ammonia, anhydrous in a DOT specification cylinder that has developed a leak. The cylinder is equipped with an emergency kit to prevent leakage during transportation.	1	3
SP13270	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification pressure vessels for use as components of safety systems. The pressure vessels, charged with non-toxic, non-liquefied gases, are authorized for transportation in commerce as specified.	1	3
SP13312	Cylinders General	Authorizes transportation in commerce of certain DOT–3, 3A, and 3AA cylinders in chlorine and silane service with a pressure relief device that does not meet the requirements of § 173.301(f)(3).	2	2
SP13317	Cylinders General	Authorizes transportation in commerce of certain DOT specification 3AL cylinders, containing diborane and diborane mixtures.	5	5
SP13323	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification cylinders containing samples of methane hydrate (frozen methane gas).	1	3
SP13325	Cylinders General	Authorizes transportation in commerce of certain compressed gases in DOT 3A and 3AA specification cylinders which are equipped with a CG–4 pressure relief device (PRD) set at 3,360 psig.	4	3
SP13330	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3A cylinder, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP13336	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3E cylinder, except as specified, for transportationin commerce of certain hazardous materials.	1	3
SP13359	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification spherical pressure vessels containing boron trifluoride.	1	3
SP13483	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming in part with DOT–3AA specification, for use in transportation in commerce of certain non-flammable, non-liquefied compressed gases.	1	3
SP13485	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT–3AA specification cylinder, except as specified, for transportation in commerce of certain hazardous materials.	3	2
SP13488	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming in part with the DOT–3AA specification, for use in transportation in commerce of certain non-flammable, non-liquefied compressed gases.	1	2
SP13582	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders and cylinders manufactured to a foreign specification which are charged for export only.	1	3
SP13598	Cylinders General	Authorizes manufacture, marking, sale and use of hydrogen storage systems for use in fuel cells to power portable devices. The hydrogen storage systems utilize non-DOT specification cylinders containing hydrogen absorbed in metal hydride.	1	3
SP13616	Cylinders General	Authorizes transportation in commerce of helium, compressed in DOT specification cylinders which are manifolded and permanently mounted in a protective frame.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP13977	Cylinders General	Authorizes transportation in commerce of a non-DOT specification fiber reinforced plastic (FRP), full composite (FC), compressed gas cylinder which are used as components in aircraft.	1	3
SP13999	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification fully-wrapped fiberglass composite cylinder with seamless, non-load sharing blow-molded thermoplastic liner for transportation in commerce of certain hazardous materials.	1	2
SP14157	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming in part to the DOT–3AA specification, for use in transportation in commerce of certain non-flammable, non-liquefied compressed gases.	1	3
SP14163	Cylinders General	Authorizes transportation in commerce of certain Division 2.2 liquefied compressed gases in DOT specification cylinders that are not equipped with an individual shutoff valve.	3	3
SP14171	Cylinders General	Authorizes transportation in commerce of nitrogen, compressed in non-DOT specification fully wrapped carbon fiber reinforced aluminum lined cylinders that are an integral part of a pressure system classified as a corrosive.	1	3
SP14209	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification fully wrapped carbon composite cylinder with seamless, non-load sharing plastic liner for transportation in commerce of the certain hazardous materials. The cylinders are authorized for self-contained underwater breathing apparatus (SCUBA) or self-contained breathing apparatus (SCBA) use.	2	3
SP14232	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with ISO Standard 11119–2, except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP14237	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders and non-DOT specification pressure vessels for Division 2.3 materials by motor vehicle, cargo vessel, and cargo aircraft.	2	4
SP14338	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 39 cylinder, for transportation in commerce of certain hazardous materials. The cylinder is authorized for limited refills.	1	3
SP14341	Cylinders General	Authorizes manufacture, marking, sale and use of 4BW240 cylinders for transportation of acrolein, Division 6.1 by motor vehicle and cargo vessel.	2	3
SP14348	Cylinders General	Authorizes transportation in commerce of certain Division 2.3 hazardous materials in DOT specification cylinders that may not have pressure relief devices.	4	3
SP14349	Cylinders General	Authorizes transportation in commerce of a non-DOT specification full opening head, steel salvage cylinder with a water capacity of more than 450L (119 gallons) for use in transporting damaged, leaking or improperly filled cylinders containing various hazardous materials.	1	3
SP14356	Cylinders General	Authorizes transportation in commerce of certain Division 4.2 organometallic liquids in a non-DOT specification pressure vessel designed, constructed and ''U'' stamped in accordance with the Section VIII, Div. 1 of the ASME Code.	1	3
SP14372	Cylinders General	Authorizes transportation in commerce of certain foreign manufactured non-DOT specification steel cylinders which are used as components (fire extinguishers) in aircraft.	1	2
SP14374	Cylinders General	Authorizes transportation in commerce of a Division 4.3 material in a non-DOT specification pressure vessel.	4	2
SP14382	Cylinders General	Authorizes transportation in commerce of certain DOT specification 3BN nickel cylinders in dedicated, interchangeable tungsten hexafluoride/hydrogen fluoride service that are requalified using external visual inspection in lieu of hydrostatic pressure test and internal visual inspection.	3	2
SP14384	Cylinders General	Authorizes transportation in commerce of propylene in DOT 3AA or 3AL specification cylinders fitted with a CG–1 pressure relief device (rupture disk) in lieu of the required CG–7 pressure relief device.	4	3
SP14396	Cylinders General	Authorizes transportation in commerce for export only of arsine in certain DOT specification and non-DOT specification cylinders.	1	3
SP14399	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming to all regulations applicable to a DOT specification 39 cylinder, except as specified, for transportation in commerce of certain hazardous materials.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14402	Cylinders General	Authorizes the manufacture, marking, sale, and use of a non-DOT specification fully wrapped fiber reinforced composite gas cylinder with a non-load sharing plastic liner that meets the ISO 11119–3 Standard except for the design water capacity and service pressure.	1	3
SP14410	Cylinders General	Authorizes transportation in commerce of certain Division 2.1 and Class 3 materials in DOT specification 4BW cylinders that are periodically requalified using external visual inspection in lieu of the required hydrostatic requalification.	1	3
SP14445	Cylinders General	Authorizes manufacture, marking, sale and use of a non-refillable, non-DOT specification inside metal container conforming in part with DOT specification 2Q, for transportation in commerce of certain refrigerant gases.	1	3
SP14457	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification fully-wrapped fiberglass composite cylinder with a welded carbon steel liner for transportation in commerce of certain hazardous materials.	1	3
SP14469	Cylinders General	Authorizes transportation in commerce of specific space satellites containing non-DOT specification pressure vessels pressurized with anhydrous ammonia with pressures up to 2,000 psig.	1	2
SP14476	Cylinders General	Authorizes transportation in commerce of non-DOT specification pressure vessels (any combination of stainless steel, carbon steel, brass, copper, or nickel heat exchangers or tubes bundles) containing the residue of certain Class 3 or Class 8 materials by motor vehicle.	1	3
SP14480	Cylinders General	Authorizes transportation in commerce of certain DOT specification cylinders and non-DOT specification cylinders manufactured to a foreign specification which are charged for export only.	1	2
SP14496	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder, used for oil well sampling, conforming with all regulations applicable to a DOT specification 3A cylinder, except as specified, for transportation in commerce of certain hazardous materials.	2	3
SP14526	Cylinders General	Authorizes transportation in commerce of a Division 2.2 compressed gas in non-refillable, non-DOT specification cylinders similar to DOT–39 that are used as components in military vehicles.	1	3
SP14543	Cylinders General	Authorizes manufacture, marking, sale and use of a DOT specification 39 cylinder for transporting carbon dioxide (Division 2.2) with a maximum permitted filling density of 75 percent.	1	3
SP14550	Cylinders General	Authorizes filling, for export only, of non-DOT specification pressure vessels containing a liquefied flammable gas, and the return of the pressure vessels to the United States, for purposes of refilling for export only, when containing a residue of the hazardous material.	1	2
SP14591	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification insulated cryogenic cylinder conforming with all regulations applicable to a DOT specification 4L cylinder for transportation in commerce of oxygen, refrigerated liquid.	1	3
SP14601	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification spherical pressure vessels for transportation in commerce of boron trifluoride.	1	3
SP14602	Cylinders General	Authorizes transportation in commerce of anhydrous ammonia in non-DOT specification packaging.	1	2
SP14624	Cylinders General	Authorizes foreign manufacture, marking, sale and use of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) cylinders for transportation in commerce of certain Division 2.1 and 2.2 compressed gases.	1	3
SP14631	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders (pressure vessels) for use as components of automobile vehicle safety systems.	1	3
SP14636	Cylinders General	Authorizes transportation in commerce of certain DOT specification 3AA and 3T cylinders that are past the test date for requalification. The prescribed packagings are tube trailers containing DOT specification 3AA or 3T cylinders.	2	2
SP14638	Cylinders General	Authorizes transportation in commerce of up to two non-DOT specification pressure vessels containing magnesium or magnesium alloys under an argon gas blanket further packaged in a non-DOT specification wooden box capable of meeting the performance requirements for PG II.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14651	Cylinders General	Authorizes transportation in commerce of silicon tetrafluoride, 2.3 Hazard Zone B, in bundles of manifolded DOT specification 3A and 3AA cylinders.	1	2
SP14683	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification steel water pump system tanks that exceed the prescribed maximum outside diameter and wall stress used for the transportation in commerce of compressed air.	1	3
SP14700	Cylinders General	Authorizes transportation in commerce of certain fully wrapped fiber-reinforced composite cylinders containing compressed air under the exception provided for water pump system tanks in § 173.306(g).	1	3
SP14744	Cylinders General	Authorizes transportation in commerce of manifolded DOT and ICC specification 3A, 3AA and 3AL cylinders containing nitrogen, compressed without pressure relief devices and a non-DOT specification refrigeration system described as pulse tube coolers containing helium.	1	3
SP14763	Cylinders General	Authorizes manufacture, marking, sale, and use of a non-DOT specification packaging conforming in part with the DOT specification 3A, except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP14778	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification welded steel cylinders containing a Division 2.2 compressed gas for export only.	1	3
SP14781	Cylinders General	Authorizes transportation in commerce of compressed hydrogen in manifold and framed non-DOT specification seamless steel cylinders originally certified as specification DOT–107A seamless steel tank car tanks.	1	3
SP14782	Cylinders General	Authorizes transportation in commerce of sulfur hexafluoride in a non-DOT specification pressure vessel which is a component of an electric utility circuit interrupter unit.	1	2
SP14796	Cylinders General	Authorizes transportation in commerce of non-DOT specification cylinders containing bromine trifluoride.	1	2
SP14799	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder (pressure vessel) as a component of automobile safety systems. The pressure vessel, charged with non-toxic, non-liquefied gases, is authorized for transportation in commerce subject to the requirements and limitations specified.	1	2
SP14803	Cylinders General	Authorizes foreign manufacture, marking, sale, and use of non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders for transportation in commerce of certain hazardous materials.	1	3
SP14808	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders, similar to a DOT 4BA, except as specified, for transportation in commerce of certain hazardous materials.	2	2
SP14811	Cylinders General	Authorizes manufacture, marking, sale, and use of a DOT specification 3AA cylinder manufactured using a bend test in lieu of a flattening test.	1	2
SP14818	Cylinders General	Authorizes manufacture, marking, sale, and use of certain fully wrapped fiber reinforced composite cylinders containing compressed air under the exception provided for water pump system tanks in 173.306(g).	1	3
SP14831	Cylinders General	Authorizes use of DOT specification 3A or 3AA cylinders for transportation in commerce of certain compressed gases.	1	3
SP14833	Cylinders General	Authorizes foreign manufacture, marking, sale and use of a non-DOT specification cylinder (pressure vessel) charged with a non-toxic, non-liquefied gas and is used as a component of an automobile safety system and transported in commerce.	1	3
SP14839	Cylinders General	Authorizes transportation in commerce of air, compressed; argon, compressed; helium, compressed; neon, compressed; nitrogen, compressed; or oxygen, compressed in DOT specification 3A and 3AA cylinders with maximum water capacity of 125 pounds that have been tested every 15 years instead of every 10 years. Cylinders must have a minimum marked service pressure of 1800 psig and be star (*) marked.	1	2
SP14864	Cylinders General	Authorizes transportation in commerce of ethylene in non-DOT specification containers, most comparable to the DOT–2Q, and allows for the controlled release of the hazardous material for the purposes of ripening produce.	1	3
SP14919	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder (pressure vessel) for use as a component of automobile safety systems.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14932	Cylinders General	Authorizes foreign manufacture, marking, sale and use of non-DOT specification fully wrapped carbon fiber reinforced aluminum lined cylinders for transportation in commerce of certain hazardous materials.	1	2
SP14950	Cylinders General	Authorizes rebuilding or modification and sale of certain DOT specification 4B, 4BA, and 4BW cylinders, by replacing or adding openings for outlet fittings on the upper head for use in transportation in commerce of certain hazardous materials.	1	3
SP14951	Cylinders General	Authorizes manufacture, marking, sale, and use of a non-DOT specification fully wrapped fiber reinforced composite gas cylinder with a non-load sharing plastic liner that meets the ISO 11119–3 Standard except for the design water capacity and working pressure for transportation in commerce of argon, compressed; helium, compressed; hydrogen, compressed; neon, compressed; nitrogen, compressed; and methane, compressed or natural gas, compressed (with high methane content).	1	2
SP14952	Cylinders General	Authorizes transportation in commerce of methyl bromide and chloropicrin and methyl bromide mixtures in non-DOT specification cylinders by motor vehicle and cargo vessel for export only.	1	2
SP14966	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification, pre-braided fully wrapped carbon composite (PBFWCC) gas cylinder with a non-metallic and non-load sharing plastic liner for transportation in commerce of air, compressed (containing up to 39% by volume oxygen).	2	2
SP14971	Cylinders General	Authorizes controlled release of nitrogen and air from cylinders during transportation to maintain an inert atmosphere in a shipping container which is required to protect the specialized electronic sensors.	2	3
SP14977	Cylinders General	Authorizes transportation in commerce of silane in certain DOT specification cylinders that are not equipped with pressure relief devices.	5	3
SP14981	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders containing compressed gas n.o.s. (containing nitrogen and helium) and phosphorus tribromide for use as fire extinguishing canisters installed on aircraft.	1	3
SP14984	Cylinders General	Authorizes use of non-DOT specification foreign cylinders containing dichlorosilane for transportation in commerce by motor vehicle and cargo vessel.	1	3
SP15002	Cylinders General	Authorizes transportation in commerce of DOT specification cylinders containing liquefied petroleum gas (LPG) and/or residue of LPG without hazard warning labels when transported in a transport vehicle that is placarded.	1	3
SP15070	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification fully wrapped carbon-fiber reinforced brass lined cylinders for transportation in commerce of certain hazardous materials.	1	2
SP15077	Cylinders General	Authorizes transportation in commerce of certain cylinders of compressed gases with a subsidiary hazard of Division 5.1, when other means of transportation are impracticable, without their outer packaging being capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test.	1	3
SP15110	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders (fire extinguishers) that are used as components on military vehicles and commercial buses for transportation in commerce of compressed gases.	1	2
SP15132	Cylinders General	Authorizes use of non-DOT specification cylinders similar to DOT specification 4D cylinders for transportation in commerce of certain Division 2.1 and 2.2 gases by motor vehicle.	1	2
SP15163	Cylinders General	Authorizes transportation in commerce of certain cylinders of compressed gases with a subsidiary hazard of Division 5.1, when other means of transportation are impracticable, without their outer packaging being capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test.	1	3
SP15164	Cylinders General	Authorizes transportation in commerce of certain cylinders of compressed gases with a subsidiary hazard of Division 5.1, when other means of transportation are impracticable, without their outer packaging being capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test.	1	3
SP15233	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification and DOT specification 4DA and 4DS cylinders, used as fire suppression systems in aircraft to be shipped, as fire extinguishers.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15237	Cylinders General	Authorizes certain non-DOT specification and DOT specification 4DA and 4DS cylinders, used as fire suppression systems in aircraft to be shipped, as fire extinguishers. The cylinders must contain bromotrifluoromethane or refrigerant gas, R 13B1, 2.2, UN1009 used in dedicated service.	1	2
SP15277	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification and DOT–4DA and 4DS specification cylinders, used as fire suppression systems in aircraft to be shipped as fire extinguishers.	1	2
SP15347	Cylinders General	Authorizes transportation in commerce of a compressed gas, n.o.s. (tetrafluoromethane and argon), Division 2.2, in non-DOT specification packagings described as a coolant supply assembly.	2	3
SP15372	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders (pressure vessels) for use as components of safety systems. The cylinders charged with non-toxic, non-liquefied gases are authorized for transportation in commerce of certain hazardous materials.	1	2
SP15389	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming to all regulations applicable to DOT specification 39 cylinders, except as specified, for transportation in commerce of compressed oxygen and certain flammable or non-flammable gases.	1	3
SP15404	Cylinders General	Authorizes transportation in commerce of certain hazardous materials in non-DOT specification cylinders used for oil well sampling.	1	2
SP15428	Cylinders General	Authorizes transportation in commerce of a space capsule containing non-DOT specification packagings of certain hazardous materials.	1	2
SP15442	Cylinders General	Authorizes transportation in commerce of hydrogen fluoride, anhydrous in a non-DOT specification cylinder.	1	3
SP15458	Cylinders General	Authorizes transportation in commerce of specially designed non-DOT specification pressure vessels containing compressed sulfurhexafluoride. The pressure vessels are described as epoxy interrupter housings, used in the electrical utility industry.	1	2
SP15461	Cylinders General	Authorizes transportation in commerce of non-DOT specification cylinders containing certain Division 2.2 gases for the purpose of conducting testing in the United States.	1	2
SP15466	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification and DOT specification 4DA and 4DS cylinders, used as fire suppression systems in aircraft to be shipped, as fire extinguishers.	1	2
SP15483	Cylinders General	Authorizes transportation in commerce of certain Division 2.2 compressed gases in non-DOT specification cylinders to support the International Space Station.	1	2
SP15491	Cylinders General	Authorizes transportation in commerce of certain non-DOT specification cylinders manufactured to a foreign specification which are charged with a Division 2.2 gas for export only.	1	3
SP15493	Cylinders General	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming to all regulations applicable to a DOT specification 39, except as specified, for transportation in commerce of a Division 2.2 material.	1	3
SP15507	Cylinders General	Authorizes the manufacture, marking, sale and use of a non-refillable, non-DOT specification inside metal container conforming with all regulations applicable to a DOT specification 2Q, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP15509	Cylinders General	Authorizes transportation in commerce of a Division 2.2 compressed gas in a non-DOT specification cylinder which is a component of a pressurized flight vehicle.	1	2
SP15515	Cylinders General	Authorizes a specification carbon composite overwrapped pressure vessel further packed in an ATA–300 Category-1 outer packaging.	1	3
SP15531	Cylinders General	Authorizes transportation in commerce of a small amount of propane gas (Division 2.1) in a non-DOT specification container.	1	3
SP15532	Cylinders General	Authorizes one-time, one-way transportation in commerce for disposal of a non-DOT specification, irregularly shaped, sodium dispersion vessel in alternative outer packaging.	1	2
SP15536	Cylinders General	Authorizes use of DOT–107A tank car tanks (tubes) for transportation in commerce of certain gases.	1	2
SP15555	Cylinders General	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders for use in oil well sampling.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15566	Cylinders General	Authorizes transportation in commerce of certain cylinders of compressed oxygen, when ground and vessel transportation is unavailable and no other practical means of transportation exist, without their outer packaging being capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test.	1	3
SP15593	Cylinders General	Authorizes manufacture, marking, sale, and use of non-DOT specification non-refillable inside containers to be used for transportation in commerce of certain Division 2.1 gases.	1	3
SP15610	Cylinders General	Authorizes transportation in commerce of certain gases in DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders.	1	2
SP15634	Cylinders General	Authorizes use of used DOT 3AL cylinders for transportation in commerce of carbon dioxide.	1	3
SP15665	Cylinders General	Authorizes transportation in commerce of a DOT specification 4AA cylinder containing anhydrous ammonia that developed a leak and is equipped with a Chlorine Institute Kit "A" to prevent leakage during transportation.	1	2
		Cylinders—NDT/Aerosols		
SP8944	Cylinders—NDT/Aerosols	Authorizes use of AE/UE in place of the internal visual inspection and hydrostatic retest required by § 180.205 for DOT 3A, 3AX, 3AA, 3AAX and 3T cylinders.	1	4
SP9758	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of a Division 2.1 material in a non-refillable, non-DOT specification inside container conforming to DOT specification 2P except for size, testing requirements, wall thickness, marking and material requirements.	2	3
SP9847	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain gases in DOT 3A, 3AA, 3AX, 3AAX, 3T cylinders, non-DOT cylinders made under SPs 13230, 13258 and UN cylinders made in accordance with ISO 11120. The cylinders (tubes) are retested by AE/UE in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4
SP10704	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain DOT specification 2Q containers with Division 2.2 materials. Uses for the gas include but are not limited to: Calibration and functional checks of environmental quality monitors, medical analyzers, or medical monitors.	13	3
SP10922	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders or DOT UN refillable pressure receptacles for transportation in commerce of certain compressed gases.	1	4
SP11516	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain DOT specification 2Q containers containing hazardous materials (*i.e.,* UN1030, UN1954, and UN1956).	30	3
SP11526	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A, 3AA, cylinders and cylinders manufactured under SPs 9370 and 9909 for transportation in commerce of liquefied or non-liquefied compressed gases, or mixtures of such compressed gases when retested by a 100% UE of the sidewall in lieu of the internal visual and the hydrostatic retest.	3	4
SP11667	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain gases in DOT 3AX, 3AAX, 3T, 3AA and 3A cylinders. The cylinders (tubes) are retested by AE/UE in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4
SP11798	Cylinders—NDT/Aerosols	Authorizes a 10-year retest interval for specification DOT 3A and 3AA cylinders used for transportation in commerce of certain Division 2.1 and Division 2.2 gases.	7	4
SP11826	Cylinders—NDT/Aerosols	Authorizes DOT specification 3AL cylinders, with specially treated interiors to prevent chloride/aluminum interaction, to be used for transportation in commerce of the compressed gas mixtures.	6	4
SP12022	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A, 3AA, 3BN cylinders and cylinders manufactured under SPs 9421, 9706, 9909 and 10047 for transportation in commerce of the compressed gases. The cylinders are retested by a one hundred percent (100%) UE in lieu of the internal visual and the hydrostatic retest required in § 180.205.	2	4
SP12184	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain gases in DOT specification 3A, 3AA, 3AX, 3AAX, and 3T cylinders. The cylinders (tubes) are retested by AE/UE in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP12247	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A, 3AA, 3AX, 3AAX, 3T cylinders and cylinders manufactured under SPs 9001, 9370, 9421, 9706, 9909, 9791, 10047, 10869 and 11692 for transportation in commerce of the compressed gases. The cylinders are retested by a 100% UE in lieu of the internal visual and the hydrostatic retest required in § 180.205.	1	4
SP12399	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3AL cylinders and aluminum cylinders manufactured under SP 12440 used for transportation in commerce of liquefied or non-liquefied compressed gases, or mixtures of such compressed gases, classed as Division 2.1, (flammable gas) Division 2.2, (non-flammable gas) or Division 2.3, (gases which are toxic by inhalation (TIH)) when retested by a one hundred percent (100%) UE in lieu of the internal visual and the hydrostatic retest required in § 180.205.	1	4
SP12552	Cylinders—NDT/Aerosols	Authorizes manufacture, marking, sale and use of certain DOT specification 2Q, non-refillable, aerosol containers filled with a propellant gas and a non-hazardous material as specified herein for transportation in commerce.	1	3
SP12574	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain compressed gases in manifolded and framed non-DOT specification seamless steel cylinders. The cylinders are retested by AE and UE in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4
SP12607	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3AL cylinders used for transportation in commerce of the compressed gases, when retested by a 100% UE in lieu of the internal visual and the hydrostatic retest required in § 180.209.	1	4
SP12629	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain gases in DOT 3AX, 3AAX, 3T, 3AA and 3A cylinders. The cylinders (tubes) are retested using AE/UE in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4
SP12690	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of chlorine in a DOT specification 3AA steel cylinder containing over 150 pounds of chlorine gas and UE as an alternative method for requalification in lieu of internal visual inspection and hydrostatic pressure testing in § 180.205.	4	4
SP12718	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3AL cylinders used for transportation in commerce of the compressed gases, when retested by a 100% UE in lieu of the internal visual and the hydrostatic retest.	1	4
SP12838	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain gases in DOT 3AX, 3AAX, 3T, 3AA and 3A cylinders. The cylinders (tubes) are retested by AE/UE in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4
SP13208	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain DOT specification 2Q containers containing only a Division 2.2 material for use in medical treatment.	2	3
SP13292	Cylinders—NDT/Aerosols	Authorizes manufacture, marking, sale and use of non-DOT specification, non-refillable plastic containers for transportation in commerce of a Division 2.2 gas and a non-hazardous material.	1	1
SP13961	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3AL cylinders for transportation in commerce of certain compressed gases, when retested by a 100% UE in lieu of the internal visual and the hydrostatic retest.	1	4
SP13998	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A, 3AA, 3BN cylinders and cylinders manufactured under certain SPs for transportation in commerce of the compressed gases, when retested by a one hundred percent (100%) UE in lieu of the internal visual and the hydrostatic retest.	1	4
SP14149	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3AL cylinders and cylinders manufactured under SP 12440 for transportation in commerce of the compressed gases, when retested by a 100% UE in lieu of the internal visual and the hydrostatic retest.	1	4
SP14175	Cylinders—NDT/Aerosols	Authorizes a 10-year retest interval for certain DOT specification 3A and 3AA cylinders used for transportation in commerce of certain Division 2.1 and Division 2.2 gases in bundles of up to 24 cylinders.	118	4

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14206	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A, 3AA, 3BN cylinders and cylinders manufactured under SPs 9001, 9421, 9370, 9706, 9791, 9909, 10047, 10869 and 11692 for transportation in commerce of compressed gases, when retested by a one hundred percent (100%) UE in lieu of the internal visual and the hydrostatic retest.	1	4
SP14239	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain gases in DOT 3A, 3AX, 3AAX, 3AA and 3T cylinders. The cylinders (tubes) are retested by AE/UE in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4
SP14254	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of aerosols with a capacity of 50 ml (1.69 fluid ounces) or less containing Division 2.2 material and no other hazardous materials as not subject to the HMR.	1	5
SP14289	Cylinders—NDT/Aerosols	Authorizes a 10-year retest interval for certain DOT 3AX, 3AAX, 3T, 3AA and 3A cylinders (tubes) used for transportation in of certain Division 2.1 and Division 2.2 gases. The cylinders are retested by AE/UE in place of the hydrostatic retest required in § 180.205.	1	4
SP14298	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain Division 2.1 and 2.2 materials in DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders (tubes) having a water capacity over 125 lbs that are requalified (using AE/UE or 100% UE methods in lieu of hydrostatic testing and visual inspection) every 10 years rather than every 5 years. The 3AX, 3AAX, and 3T cylinders (tubes) must be mounted in an ISO frame or on a trailer frame.	1	4
SP14313	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A, 3AA, and 3AL cylinders and cylinders manufactured under certain SPs for transportation in commerce of the compressed gases, when retested by a one hundred percent (100%) UE in lieu of the internal visual and the hydrostatic retest required in 49 CFR § 180.205.	2	4
SP14453	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain Division 2.1 and Division 2.2 materials in DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders having a water capacity over 125 lbs that are requalified every 10 years rather than every 5 years when requalified by 100% UE.	1	4
SP14507	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3AL cylinders made of aluminum alloy for transportation in commerce of the compressed gases, when retested by a 100% UE in lieu of the internal visual and the hydrostatic retest.	1	4
SP14508	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A, 3AA, 3BN cylinders and cylinders manufactured under SPs 9001, 9370, 9421, 9706, 9791, 9909, 10047, 10869 and 11692 for transportation in commerce of the compressed gases, when retested by a one hundred percent (100%) UE in lieu of the internal visual and the hydrostatic retest.	1	4
SP14546	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain hazardous materials in DOT specification 3AL cylinders manufactured from aluminum alloy that are requalified every 10 years rather than every 5 years using 100% UE.	2	4
SP14584	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain gases in DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders that are retested by AE/UE in lieu of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4
SP14617	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3A, 3AA or 3AL cylinders for transportation in commerce of certain compressed gases. The cylinders are retested by utilizing the 100% UE procedures in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4
SP14661	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders having a water capacity over 125 lbs. that are periodically requalified every 10 years rather than every 5 years for transportation in commerce of certain Division 2.1 and 2.2 materials. AE/UE is authorized in lieu of hydrostatic testing and visual inspection.	1	4
SP14692	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain Division 2.1 and 2.2 materials in DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders having a water capacity over 125 lbs that are periodically requalified (using UE in lieu of hydrostatic testing and visual inspection) every 10 years rather than every 5 years. The cylinders must be horizontally mounted on a motor vehicle (trailer chassis) or in an ISO frame or other framework of equivalent structural integrity.	1	4

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14784	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders having a water capacity over 125 lbs. that are periodically requalified every 10 years rather than every 5 years for transportation in commerce of certain Division 2.1 and 2.2 materials. AE/UE is authorized in lieu of hydrostatic testing and visual inspection.	1	4
SP14798	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A or 3AA cylinders for transportation in commerce of certain compressed gases when retested by utilizing the one hundred percent (100%) UE procedures described in paragraph 7, in lieu of the required internal visual inspection and the hydrostatic retest.	1	4
SP14854	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain hazardous materials in DOT specification 3AL cylinders manufactured from aluminum alloy that are requalified every 10 years rather than every 5 years using 100% UE.	1	4
SP14855	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders having a water capacity over 125 lbs. that are periodically requalified (using AE/UE or 100% UE methods in lieu of hydrostatic testing and visual inspection) every 10 years rather than every 5 years for transportation in commerce of certain Division 2.1 and 2.2 materials.	1	4
SP14856	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders having a water capacity over 125 lbs. that are periodically requalified (using AE/UE or 100% UE methods in lieu of hydrostatic testing and visual inspection) every 10 years rather than every 5 years for transportation in commerce of certain Division 2.1 and 2.2 materials.	1	4
SP14857	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders having a water capacity over 125 lbs. that are periodically requalified (using AE/UE or 100% UE methods in lieu of hydrostatic testing and visual inspection) every 10 years rather than every 5 years for transportation in commerce of certain Division 2.1 and 2.2 materials.	1	4
SP14897	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3A, 3AA, 3AX, 3AAX and 3T cylinders having a water capacity over 125 lbs. that are periodically requalified (using AE/UE or 100% UE methods in lieu of hydrostatic testing and visual inspection) every 10 years rather than every 5 years for transportation in commerce of certain Division 2.1 and 2.2 materials.	1	4
SP14920	Cylinders—NDT/Aerosols	Authorizes use of certain DOT specification 3A, 3AA, 3AL, SP9001, SP9370, SP9421, SP9706, SP9791, SP9909, SP10047, SP10869, and SP11692 cylinders when retested by a 100% UE in lieu of the internal visual and the hydrostatic retest required in § 180.205 for transportation in commerce of certain compressed gases.	1	4
SP15096	Cylinders–NDT/Aerosols	Authorizes transportation in commerce of certain DOT–3AA, 3AAX and 3T cylinders charged with a compressed gas. The cylinders (tubes) are retested by AE/UE in place of the internal visual inspection and hydrostatic test required by § 180.205.	1	2
SP15258	Cylinders—NDT/Aerosols	Authorizes use of use of certain DOT specification 3A, 3AA and 3AL cylinders for transportation in commerce of the compressed gases. The cylinders are retested by utilizing the 100% UE in lieu of the internal visual inspection and the hydrostatic retest as required in § 180.205.	1	4
SP15322	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain gases in DOT 3AX, 3AAX, 3T, 3AA and 3A cylinders. The cylinders (tubes) are retested by using modal AE and follow-up AE/UE in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	4
SP15451	Cylinders—NDT/Aerosols	Authorizes transportation in commerce of certain Division 2.1 and 2.2 materials in DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders having a water capacity over 125 lbs to be periodically requalified (using AE/UE or 100% UE methods in lieu of hydrostatic testing and visual inspection) every 10 years instead of every 5 years.	1	4
SP15660	Cylinders—NDT/Aerosols	Authorizes use of DOT specification 3AL cylinders, manufactured from aluminum alloy, that are requalified using 100% UE every 10 years rather than every 5 years for the dedicated service transportation in commerce of certain hazardous materials.	1	4

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
		Cargo Tanks/Rail Cars/Portable Tanks		
SP3121	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of specification MC 338 cargo tanks for transportation in commerce of certain poisonous hazardous materials.	2	3
SP3216	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification multi-unit tank car tanks to transport certain hazardous materials.	7	3
SP5600	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes non-DOT-specification cylinders made to the DOT 3A specification, except Monel metal may be used rather than steel..	1	2
SP5643	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of helium, refrigerated liquid, in a non-DOT specification portable tank.	1	2
SP5749	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of an insulated nickel-steel DOT specification MC–331 cargo tank for transportation in commerce of 60% tetrafluoroethylene/40% hydrogen chloride gas mixture classed as a Division 2.3 material.	1	2
SP6016	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification portable tanks for transportation in commerce of certain Division 2.2 materials.	2	3
SP6349	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain refrigerated, liquefied gases (helium, refrigerated liquid (cryogenic liquid), 2.2, UN1963 and hydrogen, refrigerated liquid (cryogenic liquid), 2.1, UN1966) in a non-DOT specification portable tank.	1	2
SP6443	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain MC 331 cargo tanks for transportation in commerce of liquefied hydrogen sulfide, classed as Division 2.3 material.	1	3
SP6610	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of DOT specification MC 312 or DOT 412 cargo tank motor vehicles and DOT specification IM 101 portable tanks with polyethylene saddles which are inspected at a frequency other than as specified in the HMR for transportation in commerce of tertiary butyl hydroperoxide.	2	2
SP6611	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification portable tanks for transportation in commerce of certain non-flammable cryogenic liquids.	4	3
SP6765	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of insulated non-DOT specification portable tanks for transportation in commerce of Divisions 2.1 and 2.2 cryogenic liquids.	11	3
SP6769	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of DOT specification tank cars and cargo tanks for transportation in commerce of certain Division 2.1 and 2.2 gases.	1	2
SP6922	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of DOT 106A500–X and DOT 110A800–W multi-unit tank car tanks that are not equipped with safety relief devices for transportation in commerce of a Division 2.3 material.	1	3
SP7041	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of prescribed non-DOT specification cargo tanks with agitators for transportation in commerce of certain waste organometallic compound dispersions and hydrocarbon solvent.	1	3
SP7073	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification portable tanks for transportation in commerce of certain hazardous materials.	2	3
SP7274	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain refrigerated gases (argon UN1951; nitrogen, UN1977; oxygen, UN1073) in non-DOT portable tanks.	1	2
SP7594	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of methyl bromide in a non-DOT specification portable tank.	1	2
SP8125	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification IMO Type 5 portable tanks for transportation in commerce of certain Division 2.1 (flammable) and 2.2 (non-flammable) gases and a Class 3 material.	3	3
SP8196	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain non-DOT specification IMO Type 5 portable tanks, each mounted in an ISO frame, for transportation in commerce of certain compressed gases in Division 2.1, 2.2 and 2.3 and Class 3 materials.	1	3
SP8232	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification portable tanks for transportation in commerce of certain Division 2.1 and Division 2.2 materials and a Class 3 material.	2	3
SP8354	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification portable tanks for transportation in commerce of certain Division 2.1 gases.	1	3
SP8523	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification IMO Type 5 portable tanks for transportation in commerce of certain Division 2.1, 2.2 and 2.3 materials.	1	3
SP8556	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of super-insulated non-DOT specification portable tanks for transportation in commerce of certain hazardous materials.	8	3
SP8627	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of multiple non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis for transportation in commerce of Class 3, Division 6.1, and Class 8 materials.	10	3
SP8650	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification steel portable tanks for transportation in commerce of certain hazardous materials.	2	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP8698	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification vacuum insulated portable tanks for transportation in commerce of certain hazardous materials.	1	3
SP8939	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of six (6) non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis for transportation in commerce of certain flammable and corrosive liquids.	1	3
SP9023	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain non-DOT specification IMO Type 5 portable tanks for transportation in commerce of certain hazardous materials.	1	3
SP9024	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification portable tanks for transportation in commerce of certain Division 2.1 and 2.2 materials.	2	3
SP9067	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of multiple non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis to be used for transportation in commerce of certain Class 3 and Class 8 materials.	1	3
SP9166	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-specification glass fiber reinforced plastic (GFRP) cargo tanks for the transportation in commerce of certain hazardous materials.	17	4
SP9228	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification cargo tanks for transportation in commerce of certain Class 8 and 9 materials.	1	3
SP9266	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification IMO Type 5 portable tanks for transportation in commerce of certain Division of 2.1, 2.2 and 2.3 gases.	5	3
SP9317	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification skid mounted portable tanks for transportation in commerce of a non-flammable gas, subject to the limitations and special requirements specified.	1	2
SP9401	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification IMO Type 5 portable tanks for transportation in commerce of certain Division 2.1 and 2.2 gases.	1	2
SP9418	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification portable tank assemblies manifolded together within a frame and securely mounted on a truck chassis, to be used for transportation in commerce of certain hazardous materials.	1	3
SP9462	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis for the transportation in commerce of certain Class 3 and Class 8 materials.	1	3
SP9490	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification IMO Type 5 portable tanks for transportation in commerce of certain Division 2.1 and 2.2 gases.	1	3
SP9530	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification IMO Type 5 portable tanks for transportation in commerce of certain Division 2.1 and 2.2 gases..	1	3
SP9548	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of a non-DOT specification IMO Type I portable tank for transportation in commerce of certain hazardous materials.	2	2
SP9579	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification motor vehicles for transportation in commerce of certain oxidizers.	1	3
SP9596	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification insulated portable tanks for transportation in commerce of helium, refrigerated liquid.	1	3
SP9819	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification steel portable tanks comparable to a DOT specification 57, except for capacity for transportation in commerce of certain Class 3 and 8 liquids to be discharged without removing the tanks from the vehicle on which it is transported.	1	3
SP9832	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a vacuum insulated, non-DOT specification portable tank to be used for transportation in commerce of certain hazardous materials.	1	3
SP10031	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification, insulated portable tanks for transportation in commerce of liquefied helium.	2	3
SP10049	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of a polyurethane insulated cargo tank conforming with MC 331 built prior to 1984 to transport certain hazardous materials.	2	2
SP10146	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a vacuum-insulated non-DOT specification portable tank for shipment of helium, refrigerated liquid.	1	2
SP10457	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of chlorine contained in MC 331 cargo tanks equipped with angle valves, excess flow valves and pressure relief valves not presently authorized in the HMR.	6	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP10480	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification vacuum insulated portable tanks for transportation in commerce of helium, refrigerated liquid.	1	3
SP10481	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale, and use of a non-DOT specification vacuum insulated portable tank in an ISO frame conforming with all regulations applicable to a DOT specification MC–338 cargo tank motor vehicle, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP10517	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of those hazardous materials authorized for transportation in DOT specification 57 portable tanks and UN 31A intermediate bulk containers (IBCs) which are retested at least once every 5 years.	1	5
SP10631	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain hazardous materials (dimethylhydrazine, unsymmetrical, 6.1, UN1163, I; hydrazine, anhydrous, 8, UN2029, I; methylhydrazine, 6.1, UN1244, I; Toxic by Inhalation liquid, flammable, n.o.s., 6.1, UN3384, I, Hazard Zone B) in DOT specification MC338 cargo tanks.	3	2
SP10709	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain materials (UN2920 and UN2924) in stainless steel DOT specification 57 portable tanks.	1	2
SP10756	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a vacuum insulated, non-DOT specification portable tank in an ISO frame for transportation in commerce of certain Division 2.2 materials.	1	2
SP10772	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, mark, sale and use of three cargo tank motor vehicles with a sump location which does not meet the requirements of § 178.338–4(c).	1	3
SP10878	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification fiberglass reinforced plastic (FRP) cargo tank motor vehicles for transportation in commerce of certain Class 8 liquids.	1	4
SP10887	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of dinitrogen tetroxide in specially designed DOT specification 51 portable tanks.	1	3
SP11073	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of chlorosulfonic acid in DOT Class 112S tank cars constructed of ASTM 240–70, Type 304L stainless steel, equipped with ½ inch thick full head shields.	1	2
SP11178	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of bromine, Class 8, Hazard Zone A, in a non-DOT specification portable tank constructed of ¼ inch thick mild steel with ¼ inch lead lining.	1	2
SP11186	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification vacuum insulated portable tank conforming with all requirements applicable to a DOT specification MC 338 cargo tank motor vehicle for transportation in commerce of certain compressed gases.	1	2
SP11253	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes continued transportation in commerce of sulfur dioxide in certain DOT specification MC–331 cargo tanks.	5	3
SP11281	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of uninsulated DOT specification cargo tanks and portable tanks for transportation in commerce of certain Class 8 and Division 6.1 materials, which are toxic by inhalation.	1	2
SP11318	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain un-insulated DOT specification 51 portable tanks that are currently authorized for certain hazardous materials, except that the portable tanks do not meet the provisions of § 172.102 special provision B14 or TP38.	1	2
SP11321	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-insulated packagings for transportation in commerce of titanium tetrachloride (PIH).	1	2
SP11388	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of DOT specification 57 portable tanks made of stainless steel, containing certain dual hazard liquids (UN2734, UN2920, UN2357, UN2924).	1	2
SP11517	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain Class 3 and Class 8 materials in multiple non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis.	1	3
SP11565	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification cargo tank motor vehicle for transportation in commerce of certain Class 8 materials.	1	2
SP11596	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain non-DOT specification pressure vessels (receptacles) without pressure relief devices, which have been approved by the German Competent Authority and are similar in design to a multi-unit tank car tank, containing hydrogen sulfide for export only.	1	2
SP11660	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of two (2) non-DOT specification cargo tanks containing hydrochloric acid.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP11714	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain non-DOT specification cargo tanks used for roadway striping.	1	2
SP11733	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of specially modified DOT specification cargo tank motor vehicles for transportation in commerce of organic peroxide, type F.	1	2
SP11759	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of hydrogen fluoride, a Class 8 material poisonous by inhalation in certain DOT specification tank cars equipped with alternative pressure relief devices and without metal jackets.	9	3
SP11808	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders (pressure vessels) for transportation in commerce of chlorine, as specified.	2	2
SP11860	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain hazardous materials, in certain DOT specification tank cars equipped with half head shields instead of the required full head protection. The hazardous materials authorized in the DOT specification 111A60ALW2,111A60ALW1 and 111A100ALW2 tank cars are Class 5.1, 8 and 9 materials.	1	3
SP11880	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain Division 4.2 materials in specially equipped, covered hopper railcars.	1	2
SP11903	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes the manufacture, marking, sale and use of non-DOT specification cargo tank motor vehicles constructed from glass fiber reinforced plastics (GFRP) conforming with all regulations applicable to a DOT 407 or DOT 412 cargo tank motor vehicle, except as specified, for transportation in commerce of certain hazardous materials.	1	4
SP11911	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification metal refueling tanks containing certain Class 3 liquids. The Class 3 liquids will be discharged from the refueling tanks without removing the refueling tanks from the vehicle on which they aretransported.	1	3
SP11966	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of a Division 5.1 material in 19 DOT specification 111A60ALW2 tank cars equipped with half head shields insteadof the required full head protection.	1	3
SP11970	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of a non-DOT specification portable tank comparable to a DOT specification 51 portable tank, except as specified, for transportation in commerce of certain pyrophoric solids.	6	3
SP12018	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification insulated portable tank conforming with all regulations applicable to a DOT specification MC–338 insulated cargo tank, except as specified, for transportation in commerce of nitrogen, argon or oxygen, refrigerated liquids.	1	3
SP12074	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of certain DOT specification 51 steel portable tanks or UN steel portable tanks conforming with requirements of special provision T50 for transportation in commerce of Division 2.1 and 2.2 materials.	1	3
SP12124	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain Division 4.2 and Division 4.3 materials in a non-DOT specification portable tank comparable to a DOT specification 51 portable tank.	2	3
SP12130	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification vacuum insulated portable tank conforming with all regulations applicable to a DOT specification MC 338 cargo tank motor vehicle, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP12173	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of non-DOT specification vacuum insulated portable tanks manufactured under a current DOT SP for transportation in commerce by cargo aircraft in Alaska, of nitrogen, refrigerated liquid.	1	3
SP12211	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of liquid nitrogen, cryogenic liquid, in non-DOT specification insulated portable tanks by cargo vessel for delivery to oil and gas production facilities within the jurisdiction of the United States of America.	4	3
SP12277	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder (pressure vessel) conforming with all regulations applicable to a DOT specification 106A500W multi-unit tank car tank, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP12289	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain DOT specification 51 steel portable tanks manufactured in accordance with Section VIII, Division 2 of the ASME Code instead of Division 1 for transportation in commerce of Division 2.1 and 2.2 materials.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP12295	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of DOT specification IM 101 portable tanks fitted with bottom outlets for transportation in commerce of a toxic liquid, flammable, organic, n.o.s.	1	2
SP12392	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain DOT specification 51 steel portable tanks designed in accordance with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1 for transportation in commerce of certain Division 2.1 and Division 2.2 materials.	1	3
SP12442	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification vacuum insulated portable tank, conforming with the regulations applicable to a DOT specification MC 338 cargo tank, except as specified, for transportation in commerce of nitrogen, refrigerated liquid.	1	2
SP12515	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification vacuum insulated portable tank conforming with all regulations applicable to a DOT specification MC 338 cargo tank motor vehicle, except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP12516	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification glass fiber reinforced plastic (GFRP) cargo tank for transportation in commerce of certain hazardous materials.	1	4
SP12608	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of DOT specification IM 101 steel portable tanks for transportation in commerce of hydrogen peroxide aqueous solutions in concentrations exceeding 72% but not exceeding 92% by weight.	1	3
SP12626	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification portable tank equipped with an external bottom discharge valve conforming to all regulations applicable to a DOT specification IM 101 portable tank, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP12628	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of certain DOT specification 51 and UN T50 steel portable tanks manufactured in accordance with Section VIII, Division 1 of the ASME Code, including the 1999 Addenda which allows a design margin of 3.5., for transportation in commerce of Division 2.1 and 2.2 materials.	1	3
SP12630	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain DOT specification IM 101 portable tanks with a minimum shell thickness less than required in the HMR for transportation in commerce of lithium alkyls.	1	2
SP12637	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain cryogenic liquids in certain non-DOT specification vacuum insulated portable tanks.	2	2
SP12724	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain DOT specification MC 312 cargo tank motor vehicles equipped with a pressure relief device not in conformance with the HMR for transportation in commerce of hydrogen fluoride.	1	3
SP12779	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of a non-DOT specification vacuum insulated portable tank conforming with all regulations applicable to a DOT specification MC 338 cargo tank motor vehicle, except as specified, containing certain hazardous materials.	1	3
SP12841	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification vacuum insulated portable tanks conforming with all regulations applicable to a DOT specification MC 338 cargo tank motor vehicle, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP12905	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes tank car information to be stamped on permanent identification plates placed on opposite ends of the tank car instead of stamped into the tank's head.	11	5
SP12930	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of specific lined DOT specification MC312, DOT specification 407, and DOT specification 412 cargo tank motor vehicles which are not subject to the internal visual inspections required by § 180.407(e) and (f) for transportation in commerce of certain acids.	1	2
SP12981	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of DOT specification MC–330 and MC–331 cargo tankmotor vehicles containing nitrous oxide, refrigerated liquid, with an alternate means to shut-down the flow of product.	1	3
SP13020	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain non-DOT specification IMO Type 5 portable tanks for transportation in commerce of propane.	1	3
SP13046	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain UN portable tanks manufactured in accordance with Section VIII, Division 2 of the ASME Code, instead of Division 1 for transportation in commerce of Division 2.1 and 2.2 materials.	3	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders	Code
SP13110	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of dry metal catalyst in a non-DOT specification bulk packaging.	1	3
SP13207	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of ferric chloride solution and sulfuric acid in certain DOT specification IM 101 and UN portable tanks that do not conform with the filling density requirements specified in § 173.32(f)(5).	1	3
SP13219	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain DOT specification tank cars, containing Division 5.1 or 5.2 materials that have been inspected under a modified inspection program prior to being offered for transportation.	3	4
SP13258	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders conforming with all regulations applicable to a DOT specification 3T cylinder except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP13264	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes limited transportation in commerce within the United States of certain non-insulated, non-DOT specification steel portable tanks containing chloropicrin to facilitate international commerce.	1	3
SP13327	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of manway assemblies constructed from glass fiber reinforced plastics (GFRP) for installation on certain DOT specification cargo tank motor vehicles in transporting certain hazardous materials.	1	4
SP13385	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain UN portable tanks, containing liquid helium, which have not been impact tested.	1	4
SP13402	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of sulfur hexafluoride in DOT specification 110A1000W multi-unit tank car tanks with a higher filling density than currently authorized by the HMR.	2	3
SP13421	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification portable tank equipped with an external bottom discharge valve conforming to all regulations applicable to a UN portable tank, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP13482	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of uninsulated UN portable tanks that are currently authorized for transportation in commerce of certain hazardous materials, except that the UN portable tanks do not meet the provisions of § 172.101 special provisions B14 and TP38.	1	2
SP13958	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of low specific activity LSA–II radioactive waste in non-specification packages consisting of either gondola rail cars with an 18-mil high density polypropylene (HDPP) liner or in tarpaulin-covered dump trucks with a 4 to 6-mil high density polyethylene (HDPE) liner.	1	3
SP14038	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of DOT specification 111S100W6 tank cars having a maximum gross weight on rail at 286,000 pounds for the transportation of Class 8 materials.	1	5
SP14039	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain UN portable tanks conforming to the requirements of § 172.102(c)(7) portable tank code T50 which are designed and constructed in accordance with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1 for transportation in commerce of Division 2.1 and 2.2 materials.	1	2
SP14167	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of DOT specification 105J600W tank cars having a protective housing welded to the tank flange and having a maximum GWR (gross weight on rail) of 286,000 pounds for transportation in commerce of chlorine.	1	3
SP14173	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of DOT specification 105J400W tank cars having a maximum gross weight on rail at 286,000 pounds for transportation in commerce of certain hazardous materials.	2	2
SP14186	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of DOT specification 105J300W tank cars having a maximum gross weight on rail at 286,000 pounds for certain hazardous materials.	1	5
SP14193	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of thirty five non-DOT specification IMO Type 5 portable tanks, each mounted in an ISO frame, containing certain Division 2.2 and 2.3.compressed gases.	1	2
SP14210	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain UN portable tanks conforming to the requirements of § 172.102(c)(7), T50 which are designed and constructed in accordance with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1. The portable tanks, mounted in ISO frames, are authorized for transportation in commerce of Division 2.1 and 2.2 materials.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14262	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes continued transportation in commerce of certain railroad tank cars containing carbon dioxide with a tank head thickness slightly below the minimum required.	2	2
SP14275	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification cargo tank motor vehicle conforming with all regulations applicable to DOT specification 412/407 cargo tank motor vehicles, except as specified, for transportation in commerce of certain hazardous materials.	2	3
SP14277	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification carbon glass fiber reinforced plastic (GFRP) cargo tank conforming with all regulations applicable to a DOT specification 407/412 cargo tank motor vehicle, except as specified, for transportation in commerce of certain hazardous materials.	1	4
SP14292	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transport of boron trifluoride in DOT specification 3AAX and 3AA manifolded cylinders.	2	2
SP14296	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of certain UN Portable Tanks manufactured in accordance with Section VIII, Division 2 of the ASME Code, instead of Division 1. The portable tanks, mounted in ISO frames, are authorized for transportation in commerce of Division 2.1 and 2.2 materials.	2	3
SP14301	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of certain UN portable tanks conforming to the requirements of § 172.102(c)(7), T50 which are designed and constructed in accordance with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1. The portable tanks, mounted in ISO frames, are authorized for the transportation in commerce of Division 2.1 and 2.2 materials.	2	2
SP14317	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of certain UN portable tanks conforming to the requirements of § 172.102(c)(7) portable tank code T50 which are designed and constructed in accordance with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1. The portable tanks, mounted in ISO frames, are authorized for transportation in commerce of Division 2.1 and 2.2 materials.	1	3
SP14318	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain Division 2.3, Division 3, Division 6.1 and Class 8 materials in a non-DOT specification portable tank conforming to the requirements specified in § 172.102(c)(7) portable tank code T50 (UN portable tank) which are designed, constructed, certified and stamped in accordance with Section VIII, Division 1 of the ASME Code (2007 edition).	2	4
SP14398	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of DOT specification 105J600W tank cars having a maximum gross weight on rail at 286,000 pounds for the transportation of titanium tetrachloride.	1	4
SP14437	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder (pressure vessel) conforming with all requirements applicable to a DOT specification 106A500W multi-unit tank car tank except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP14467	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale, and use of DOT 400 series cargo tank motor vehicles fabricated using certain duplex stainless steels and other materials not authorized in § 178.345–2 as a material of construction.	1	4
SP14483	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of certain UN portable tanks conforming to the requirements of § 172.102(c)(7) T50 which are designed and constructed in accordance with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1. The portable tanks, mounted in ISO frames, are authorized for the transportation in commerce of Division 2.1 and 2.2 materials.	1	2
SP14492	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale, and use of certain UN portable tanks conforming to the requirements of § 172.102(c)(7) portable tank code T50 which are designed and constructed in accordance with Section VIII, Division 1 of the ASME Code, including the 2004 edition, which allows a design margin of 3.5:1. The portable tanks, mounted in ISO frames, are authorized for transportation in commerce of Division 2.1 and 2.2 materials.	1	2
SP14520	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of DOT specification 105J500W tank cars having a maximum gross weight on rail of 268,000 pounds for transportation in commerce of chlorine, a Division 2.3 material provided the weight increase is applied to safety improvements of the packaging.	1	5

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders	Code
SP14532	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain Division 5.1 hazardous materials in tank cars that have not had their rupture disk removed for inspection.	1	2
SP14560	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of Division 4.2 hazardous materials in tank cars fitted with an alternative means of fittings protection.	1	2
SP14572	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of certain UN portable tanks conforming to the requirements of § 172.102(c)(7), T50 which are designed and constructed in accordance with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1. The portable tanks, mounted in ISO frames, are authorized for transportation in commerce of Division 2.1 and 2.2 materials.	1	2
SP14573	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of DOT 400 series cargo tank motor vehicles fabricated using certain duplex stainless steels and other materials not authorized in § 178.345–2 as materials of construction.	1	4
SP14574	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of specific lined DOT specification MC 312 and DOT 412 cargo tanks which are not subject to the internal visual inspections and lining inspections required by § 180.407(c), (e) and (f) for transportation in commerce of certain Class 8 and Division 6.1 materials.	1	2
SP14578	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale, and use of certain UN portable tanks conforming to the requirements of § 172.102(c)(7) T50 which are designed and constructed in accordance with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1. The portable tanks, mounted in ISO frames, are authorized for transportation in commerce of Division 2.1 and 2.2 materials.	1	2
SP14597	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of DOT specification DOT 110AW multi-unit tank car tanks for transportation in commerce of anhydrous ammonia and chlorine.	1	2
SP14616	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale, and use of certain UN portable tanks conforming to the requirements of § 172.102(c)(7) portable tank code T50 which are designed and constructed in accordance with Section VIII, Division 2 of the ASME Code instead of Section VIII, Division 1 for transportation in commerce of Division 2.1 and 2.2 materials.	1	3
SP14689	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain DOT specification MC–331 cargo tank motor vehicles with a water capacity greater than 3,500 gallons, manufactured to the DOT MC–331 specification, constructed of quenched and tempered (''QT'') steel except that the cargo tanks have baffle support clips welded directly to the inside of the cargo tank wall without the use of pads.	1	3
SP14630	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of certain non-DOT specification cargo tanks (nurse tanks) that are not authorized by the HMR for transportation in commerce of certain Division 6.1 liquid soil pesticide fumigants.	1	2
SP14710	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale, and use of DOT 400 series cargo tank motor vehicles constructed of titanium instead of the materials authorized in § 178.345–2.	1	4
SP14734	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of DOT specification 111A100W5 tank cars having a maximum gross weight on rail at 286,000 pounds for transportation in commerce of a Class 8 material.	1	4
SP14743	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes one-time, one-way transportation in commerce of approximately 2,020 lbs. of sodium in a non-DOT specification metal bulk tank.	1	2
SP14751	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of an organometallic substance, solid, in a non-DOT specification portable tank which is designed in accordance with the requirements for an UN portable tank and portable tank instructions ''T9'' except it is equipped with a bottom opening, or a DOT specification UN portable tank designed to the meeting the requirements of portable tank instruction ''T21''.	2	2
SP14756	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of a Division 4.2 material in 35 non-DOT specification portable tanks conforming to the requirements of a UN T21 portable tank except for the thickness of the bottom conical head.	1	3
SP14765	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of specific lined DOT specification MC 312 and DOT 412 cargo tank motor vehicles which are not subject to the internal visual inspections required by 49 CFR 180.407(c), (e) and (f) for transportation in commerce of certain acids.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14770	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of an organometallic substance, solid, water-reactive, flammable n.o.s in a non-DOT specification portable tank which is designed in accordance with the provisions for an UN portable tank (portable tank instruction ''T9''), except it is equipped with a bottom opening.	2	2
SP14779	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification glass fiber reinforced plastic (GFRP) cargo tank conforming with all regulations applicable to a DOT specification 412/ 407, except as specified, for transportation in commerce of certain hazardous materials.	1	4
SP14815	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of fifteen vacuum insulated UN portable tanks conforming to the requirements of § 72.102(c)(7) portable tank instruction ''T75'' which are designed and constructed in accordance with the EN 13530 Standard instead of the ASME Code Section VIII for export only of nitrous oxide, refrigerated liquid.	1	3
SP14832	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of DOT 105 and DOT 112 specification tank cars for use in transportation of hazardous materials that are toxic by inhalation with a welded manway protective housing, subject to certain limitations.	1	2
SP14889	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain UN portable tanks that are waived from the requirement to perform an internal examination as part of the intermediate 2.5 year periodic inspection when used exclusively for the transport of certain Class 4 organometallic substances.	1	3
SP14948	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of missile sustainer sections containing a flammable liquid in non-DOT specification packaging by motor vehicle and cargo vessel.	2	2
SP14980	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes one-way transportation in commerce of liquefied petroleum gas (LPG) in certain non-DOT specification storage tanks by private carrier motor vehicle. The prescribed packagings are non-DOT specification storage containers for liquefied petroleum gas, designed for permanent installation on consumer premises. Each container must conform to the following description: (1) Be ASME Code ''U'' stamped; and (2) have a water capacity not exceeding 500 gallons.	22	4
SP15028	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes use of specific lined DOT specification MC 312, and DOT specification 412 cargo tank motor vehicles which are not subject to the internal visual inspections required by § 180.407(c), (e) and (f) for transportation in commerce of certain acids.	1	2
SP15036	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of non-DOT specification tank cars consisting of an inner pressure vessel and an outer protective for use in transportation of hazardous materials that are toxic by inhalation, subject to certain requirements and limitations.	1	2
SP15220	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of UN T75 Code portable tanks that are designed, constructed, certified and stamped in accordance with Section VIII Division 1, latest edition, of ASME Code, except as specified, for transportation in commerce of certain hazardous materials.	1	4
SP15229	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of chlorine, Division 2.3 material in DOT 106A500X and DOT 106A500W multi-unit tank car tanks that are not equipped with a pressure relief device.	1	3
SP15267	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, and sale of non-DOT specification portable tanks with a maximum capacity of 165 liters (43.6 U.S. gallons) for transportation in commerce of liquid bromine.	1	3
SP15284	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of anhydrous hydrogen fluoride in DOT 112S500I specification tank cars equipped with alternative pressure relief devices.	4	2
SP15326	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain Division 4.2 and Division 4.3 materials in MC 331 cargo tank motor vehicles with filling/discharge connections external to the tank and located in a recessed well on the top of the cargo tank that does not have a remote self-closing internal valve.	1	2
SP15384	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of certain gases in DOT 107A tank car tanks (tubes). The tubes are retested by AE/UE in place of the internal visual inspection and the hydrostatic retest required in § 180.205.	1	3
SP15393	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes transportation in commerce of sulfuric acid in tanks cars that have undergone an alternative pre-trip inspection procedure.	1	4

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15552	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes manufacture, marking, sale and use of a non-DOT specification glass fiber reinforced plastic (GFRP) cargo tank conforming with all regulations applicable to a DOT specification 407/412 for transportation in commerce of certain hazardous materials.	1	4
SP15647	Cargo Tanks/Rail Cars/ Portable Tanks.	Authorizes retesting of certain DOT specification and non-DOT specification multi-unit tank car tanks without approval from the Association of American Railroads (AAR).	1	3
		Operational Air/Vessel		
SP6543	Operational Air/Vessel	Authorizes use of non-DOT specification cylinders or containers for transportation in commerce of certain hazardous materials.	2	2
SP7060	Operational Air/Vessel	Authorizes carriage of radioactive materials aboard cargo aircraft only, under any combination of the following conditions: When the combined transport index exceeds the authorized limit of 200 per aircraft (as specified in § 175.700(b)(2)(ii)), or the separation distance criteria of § 175.702(a)(2)(ii) cannot be met.	2	3
SP7280	Operational Air/Vessel	Authorizes transportation in commerce of certain motor vehicles, fixed wing aircraft, helicopters, air cushioned vehicles/boats and power boats with fuel tanks ¾ full instead of ¼ full. In addition, the fueled vehicles are authorized to be transported with battery cables connected if the holds or compartment of a vessel in which vehicles are loaded are mechanically ventilated.	1	3
SP7465	Operational Air/Vessel	Authorizes stowage aboard passenger vessels of motor vehicles, such as recreational vehicles, with attached cylinders of liquefied petroleum gas, as well as extra containers of gasoline (including camp stove or lantern fuel) and portable cylinders of liquefied petroleum gas. (State of Alaska, Department of Transportation).	1	3
SP7605	Operational Air/Vessel	Authorizes transportation in commerce of certain explosives contained in partially disassembled aircraft or sub-assemblies with explosive components (ejection seat, fuselage and canopy related devices) and aircraft canopy assemblies with explosive components installed.	2	2
SP7648	Operational Air/Vessel	Authorizes transportation of flares, aerial classed as Division 1.3G in a small cargo aircraft only, for test purposes..	1	2
SP7891	Operational Air/Vessel	Authorizes transportation in commerce of certain specially designed combination packagings containing certain hazardous materials without hazard labels or placards, with quantity limits not exceeding one liter for liquids or 2.85 kilograms for solids.	4	3
SP7928	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials using alternate stowage. (State of Alaska, Department of Transportation).	1	3
SP8249	Operational Air/Vessel	Authorizes manufacture, marking, sale and use of specially designed combination packagings for transportation in commerce of various hazardous materials without hazard labels or placards, with quantity limits not exceeding one liter for liquids or 2.85 kilograms for solids.	1	3
SP8307	Operational Air/Vessel	Authorizes transportation in commerce of packages described as non-pyrotechnic smoke generators containing certain Class 8 materials that may have a subsidiary poison inhalation hazard and also may contain nitrogen, compressed gas.	1	3
SP8697	Operational Air/Vessel	Authorizes transportation in commerce of liquefied petroleum gas in amounts that exceed the quantity limitations for transportation by cargo aircraft only in the State of Alaska.	1	3
SP8826	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 1.4, 1.5 and 1.6 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP8914	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP9168	Operational Air/Vessel	Authorizes the manufacture, marking, sale and use of specially designed combination packagings for transportation in commerce of various hazardous materials without hazard labels or placards, with quantity limits not exceeding one liter for liquids or 2.85 kilograms for solids.	2	3
SP9211	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 military explosives on certain vessels, in cargo holds having electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems.	8	3
SP9551	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP9689	Operational Air/Vessel	Authorizes transportation in commerce of certain dense or heavy materials such as toluene diisocyanate, and other hazardous materials not exceeding 12.09 pounds per gallon, to be secured against movement in a freight container or transport vehicle by the use of a fabric restraint dunnage system when shipped by cargo vessel.	1	3
SP9735	Operational Air/Vessel	Authorizes certain Dangerous Cargo Manifests (DCMs) to be retained in a location other than on or near the bridge of the cargo vessel while the vessel is in port.	1	5
SP9856	Operational Air/Vessel	Authorizes use of either DOT specification or non-DOT specification packaging and authorizes patient use of oxygen systems (Division 2.2) on board a passenger ship or cargo ship.	1	2
SP10298	Operational Air/Vessel	Authorizes transportation in commerce of certain liquid fuels, Class 3 materials, contained in non-DOT specification packaging seal drums or rollagons of up to 500 gallon capacity by cargo aircraft to remote locations within the State of Alaska and Bronson Creek, British Columbia, Canada.	1	3
SP10648	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP10672	Operational Air/Vessel	Authorizes manufacture, marking, sale and use of specially designed combination packagings for transportation in commerce of certain Division 4.3, 4.1, 5.1, 5.2, 4.2, 6.1, Class 8 and 3 materials without hazard labels or placards, with quantity limits not exceeding one liter for liquids or 2.85 kilograms for solids.	1	3
SP10688	Operational Air/Vessel	Authorizes transportation in commerce of gasoline in non-DOT specification polyethylene containers, and overpacked on small, passenger-carrying aircraft within the State of Alaska.	1	3
SP10790	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP10966	Operational Air/Vessel	Authorizes transportation in commerce by helicopter of certain Class 3 materials and a Class 8 material in a UN31HA1 intermediate bulk container (IBC).	1	2
SP11110	Operational Air/Vessel	Authorizes transportation in commerce of Division 1.4S and Class 8 PGIII materials in an inaccessible location aboard an aircraft in quantities exceeding those authorized by § 175.75.	1	3
SP11136	Operational Air/Vessel	Authorizes the offering in air transportation of fireworks, Division 1.3G, UN0335 which are forbidden or exceed the quantity limitations authorized for transportation by cargo aircraft only.	3	3
SP11232	Operational Air/Vessel	Authorizes transportation in commerce of acetylene, dissolved, contained in a DOT specification cylinder secured on a state-owned maintenance motor vehicle while stowed on a protected vehicle deck on board a passenger ferry vessel.	1	2
SP11248	Operational Air/Vessel	Authorizes manufacture, marking, sale and use of specially designed combination packagings for transportation in commerce of various hazardous materials without hazard labels or placards, with quantity limits not exceeding one liter for liquids or 2.85 kilograms for solids per inner packaging.	1	3
SP11273	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP11328	Operational Air/Vessel	Authorizes transportation in commerce of an alternate stacking arrangement for cylindrical shaped UN5H3 bags of explosive, blasting type E, 1.5D, UN0332.	2	3
SP11386	Operational Air/Vessel	Authorizes transportation in commerce of certain liquefied petroleum gases and acetylene contained in DOT specification cylinders on board passenger ferry vessels which are carrying more than 25 passengers.	1	2
SP11503	Operational Air/Vessel	Authorizes transportation in commerce of certain closed freight containers on unmanned deck barges without the need to segregate the freight containers in accordance with the provisions of § 176.83(f) during Puget Sound and Alaska operations.	1	3
SP11510	Operational Air/Vessel	Authorizes transportation in commerce of certain DOT specification cylinders containing propane, a Division 2.1 gas, which is forbidden for shipment aboard passenger carrying aircraft.	1	2
SP11677	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders	Code
SP11781	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP11844	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP11866	Operational Air/Vessel	Authorizes transportation in commerce of internal combustion-powered motor vehicles in freight containers in cargo vessel holds that are not ventilated.	1	3
SP11881	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 (explosive) materials of different compatibility groups in the same motor vehicle in the vehicle spaces of a vessel under certain conditions.	2	3
SP11989	Operational Air/Vessel	Authorizes stowage of certain Division 1.1, 1.2 and 1.4 explosives, in the same freight container with helium, compressed and nitrogen, compressed, Division 2.2, on board certain Department of Defense vessels.	1	2
SP12054	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP12133	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP12283	Operational Air/Vessel	Authorizes transportation in commerce of batteries for disposal or remanufacture, in non-DOT specification packagings, by cargo aircraft only between remote places within the State of Alaska.	6	3
SP12339	Operational Air/Vessel	Authorizes transportation in commerce by cargo vessel of DOT specification 3AL aluminum cylinders containing various Division 2.1 and 2.3 gases that are currently permitted for transport in such cylinders only by highway, rail and, in some cases, cargo-only aircraft.	8	2
SP12362	Operational Air/Vessel	Authorizes limited maintenance and repair operations to vehicles stowed below deck in the same cargo holds as Class 1 explosives aboard certain vessels.	1	2
SP12382	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP12383	Operational Air/Vessel	Authorizes stowage of closed steel freight containers of certain Class 1 explosives, in the cargo hold adjacent to the machinery space, at a distance of less than three meters from the forward bulkhead of the machinery space.	1	2
SP12401	Operational Air/Vessel	Authorizes manufacture, marking, sale and use of specially designed combination packagings for transportation in commerce of various hazardous materials without hazard labels or placards, with quantity limits not exceeding one liter for liquids or 2.85 kilograms for solids.	1	3
SP12463	Operational Air/Vessel	Authorizes transportation in commerce of oxygen, refrigerated liquid, UN1073 in insulated cylinders or insulated cargo tanks aboard a passenger ferry vessel as prescribed.	1	2
SP12592	Operational Air/Vessel	Authorizes transportation in commerce of motor vehicles with fuel in their tanks in a cargo hold of a certain vessel without full compliance with § 176.905(h), which requires all electrical equipment in the hold, other than fixed explosion-proof lighting, to be disconnected from its power source at a location outside the hold.	1	2
SP12674	Operational Air/Vessel	Authorizes transportation in commerce of certain DOT specification cylinders containing propane, a Division 2.1 gas, which is forbidden for shipment aboard passenger carrying aircraft.	1	2
SP12708	Operational Air/Vessel	Authorizes the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.The SP authorizes transportation of certain hazardous materials in aircraft of United States registry. It does not grant authority to use foreign controlled airspace or airports outside the United States.	1	2
SP12982	Operational Air/Vessel	Authorizes transportation in commerce of black powder for small arms and primers by which are forbidden for transportation by air, to be transported by passenger-carrying aircraft within and around the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP13137	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP13169	Operational Air/Vessel	Authorizes transportation in commerce of certain DOT specification UN31A intermediate bulk containers containing flammable liquid, n.o.s. or combustible liquid, n.o.s., which exceed quantity limitations when shipped by air during Alaska operations.	1	3
SP13200	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP13313	Operational Air/Vessel	Authorizes transportation in commerce aboard passenger ferry vessels of certain hazardous materials contained on roll-on, roll-off transport vehicles subject to certain limitations and special requirements.	1	2
SP13736	Operational Air/Vessel	Authorizes transportation in commerce of certain DOT specification UN31A intermediate bulk containers containing certain Class 3 materials which exceed quantity limitations when shipped by air.	1	2
SP13876	Operational Air/Vessel	Authorizes the City of Kotzebue to offer for transportation in commerce certain batteries for disposal or remanufacture in non-DOT specification packagings exceeding the gross weight limitations by cargo aircraft only within the State of Alaska.	1	3
SP13997	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP14145	Operational Air/Vessel	Authorizes the stowage of Class 1 (explosive) materials, in certain locations of a cargo hold above, below and adjacent to specified machinery spaces other than Category A. In addition, it authorizes the handling of Class 1 materials in certain locations of a cargo hold and on the transfer deck (main deck) while in transit and loading and unloading while underway at sea.	2	3
SP14146	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of flammable liquid powered internal combustion engines and marine propulsion equipment containing internal combustion engines, with coolant and hydraulic systems that have not been emptied.	1	2
SP14158	Operational Air/Vessel	Authorizes transportation in commerce of a fuel cell power plant assembly containing packaged Division 4.2, PG II, and Class 8, PG II materials without meeting the segregation requirements.	1	2
SP14166	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	2	3
SP14201	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	3
SP14210	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP14327	Operational Air/Vessel	Authorizes transportation in commerce of certain compressed gas fueled and liquid-fueled cigarette lighters in checked baggage of passenger aircraft when packaged in a rigid, vapor-tight non-DOT specification solid plastic packaging that prevents any movement of the lighter during transport.	1	3
SP14392	Operational Air/Vessel	Authorizes stowage of Class 1 explosive materials below deck of a cargo vessel with an alternative container stowage configuration.	2	2
SP14466	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within and around the State of Alaska when other means of transportation are impracticable or not available.	3	3
SP14516	Operational Air/Vessel	Authorizes a package of radioactive material that is labeled with the Cargo Aircraft Only label and also a subsidiary hazard label to be loaded in an inaccessible cargo location when transported by aircraft.	1	3
SP14527	Operational Air/Vessel	Authorizes air transportation of hazardous materials without identifying the packaging type on the Notification to Pilot in Command.	2	5
SP14531	Operational Air/Vessel	Authorizes transportation in commerce of a breath tester in company owned aircraft as unregulated.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14548	Operational Air/Vessel	Authorizes transportation of wheelchairs or other battery-powered mobility aids equipped with a non-spillable battery in checked baggage of passenger aircraft without disconnecting the battery.	3	5
SP14554	Operational Air/Vessel	Authorizes transportation in commerce of certain forbidden explosives by helicopter to various mountain sites in Antarctica as directed by the National Science Foundation of the U.S. government.	1	3
SP14569	Operational Air/Vessel	Authorizes transportation of Class 1 (explosive) materials on unmanned deck barges in an alternative stowage configuration.	2	2
SP14592	Operational Air/Vessel	Authorizes transportation in commerce of life-saving appliances, self-inflating by air when identifying only the gross weight per package on shipping papers.	1	5
SP14632	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	2
SP14641	Operational Air/Vessel	Authorizes transportation in commerce by air of certain hazardous materials in packagings that exceed the quantity limit for cargo carrying aircraft.	1	3
SP14644	Operational Air/Vessel	Authorizes transportation in commerce by Part 133 Rotorcraft External Load Operations transporting certain hazardous materials attached to or suspended from a cargo aircraft in remote areas of the U.S. only, without being subject to certain hazard communication and packaging requirements.	1	2
SP14650	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1D and 1.4B explosives which are forbidden for transportation by cargo aircraft only.	1	2
SP14791	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP14828	Operational Air/Vessel	Authorizes transportation in commerce of certain Division 1.1, 1.3, 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only.	1	2
SP14830	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by cargo aircraft and rotorcraft (external load operations subject to 14 CFR Part 133) in remote areas of the United States only, without being subject to certain hazard communication requirements, quantity limitations, and certain loading and stowage requirements.	1	2
SP14861	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by cargo aircraft in remote areas of the U.S. only, without being subject to hazard communication requirements and quantity limitations.	1	2
SP14907	Operational Air/Vessel	Authorizes transportation in commerce by air UN1268, petroleum distillates, n.o.s. solution, PG III in packages that exceed the quantity limit for cargo only aircraft.	1	3
SP14908	Operational Air/Vessel	Authorizes use of outer packaging not being capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test for the transportation in commerce of certain cylinders of compressed oxygen, when no other practical means of transportation exists.	1	2
SP14921	Operational Air/Vessel	Authorizes transportation in commerce of compressed oxygen by Part 133 Rotorcraft External Load Operations attached to or suspended from an aircraft only within the State of Alaska.	1	3
SP14924	Operational Air/Vessel	Authorizes transportation in commerce of certain explosives by vessel in an alternative stowage configuration.	1	3
SP14927	Operational Air/Vessel	Authorizes transportation in commerce of certain cylinders of compressed gases with a subsidiary hazard of Division 5.1, when other means of transportation are impracticable, without their outer packaging being capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test.	1	2
SP14959	Operational Air/Vessel	Authorizes transportation in commerce Class 3 gasoline in private motor vehicles and trailers when in approved containers of 6 gallon or less capacity on passenger ferry vessels transporting motor vehicles.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14995	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air or exceed the quantity limits, to be transported by cargo aircraft in the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP14996	Operational Air/Vessel	Authorizes transportation in commerce of certain forbidden explosives by Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the United States only.	1	2
SP14999	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the United States only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15005	Operational Air/Vessel	Authorizes transportation in commerce of propane Division 2.1 in DOT specification 4B240, 4BA240, 4BW240 cylinders by Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from a cargo aircraft within the State of Alaska without being subject to quantity limitations.	1	3
SP15006	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 hazardous materials which are forbidden for transportation by air, to be transported in Part 133 Rotorcraft External Load Operations attached to or suspended from an aircraft, in remote areas of the State of Alaska only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	3
SP15014	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 hazardous materials by Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas within the State of Alaska only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	3
SP15073	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the United States only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15118	Operational Air/Vessel	Authorizes transportation in commerce of sodium cyanide in quantities that exceed those authorized by cargo only aircraft.	1	2
SP15126	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations attached to or suspended from a cargo aircraft, in remote areas of the U.S. only.	1	2
SP15129	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within and around the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP15162	Operational Air/Vessel	Authorizes transportation in commerce of certain explosives that are forbidden for transportation by cargo aircraft in alternative packaging by 14 CFR Part 133 Rotorcraft External Load Operations attached to or suspended from an aircraft, in remote areas of the U.S. only.	1	2
SP15182	Operational Air/Vessel	Authorizes transportation in commerce of an oxidizing solid, water-reactive material as an excepted quantity on cargo aircraft.	1	3
SP15187	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15226	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within and around the State of Alaska when other means of transportation are impracticable or not available.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15227	Operational Air/Vessel	Authorizes carriage of radioactive materials aboard cargo aircraft only, under any combination of the following conditions: When the combined transport index exceeds the authorized limit of 200 per aircraft (as specified in § 175.700(b)(2)(ii)), or the separation distance criteria of § 175.702(b) cannot be met.	1	3
SP15228	Operational Air/Vessel	Authorizes carriage of radioactive materials aboard cargo aircraft only, under any combination of the following conditions: When the combined transport index exceeds the authorized limit of 200 per aircraft (as specified in § 175.700(b)(2)(ii)), or the separation distance criteria of § 175.702(b) cannot be met.	1	3
SP15238	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15240	Operational Air/Vessel	Authorizes transportation in commerce of certain flammable and combustible liquids in alternative packaging having a capacity of 119 gallons or more by cargo aircraft.	1	3
SP15241	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP15243	Operational Air/Vessel	Authorizes transportation in commerce of gasoline in non-DOT specification polyethylene containers, overpacked with plywood, on small, passenger-carrying aircraft within the State of Alaska.	1	3
SP15251	Operational Air/Vessel	Authorizes carriage of radioactive materials aboard cargo aircraft only, under any combination of the following conditions: When the combined transport index exceeds the authorized limit of 200 per aircraft (as specified in § 175.700(b)(2)(ii)), or the separation distance criteria of § 175.702(b) cannot be met.	1	3
SP15255	Operational Air/Vessel	Authorizes carriage of radioactive materials aboard cargo aircraft only, under any combination of the following conditions: When the combined transport index exceeds the authorized limit of 200 per aircraft (as specified in § 175.700(b)(2)(ii)), or the separation distance criteria of § 175.702(b) cannot be met.	1	3
SP15274	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft including external load within the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP15292	Operational Air/Vessel	Authorizes transportation in commerce of certain liquid fuels, Class 3 materials, contained in non-DOT specification packaging seal drums or rollagons of up to 500 gallon capacity by cargo aircraft to remote locations only within the State of Alaska.	1	3
SP15304	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15324	Operational Air/Vessel	Authorizes transportation in commerce of certain liquid fuels, Class 3 materials, contained in non-DOT specification packaging seal drums or rollagons of up to 500 gallon capacity by cargo aircraft to remote locations only within the State of Alaska.	1	3
SP15330	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP15343	Operational Air/Vessel	Authorizes transportation in commerce of certain liquid fuels, Class 3 materials, contained in non-DOT specification packaging seal drums or rollagons of up to 500 gallon capacity by cargo aircraft to remote locations within the State of Alaska and Bronson Creek, British Columbia, Canada.	1	3
SP15344	Operational Air/Vessel	Authorizes transportation in commerce of certain DOT specification cylinders containing propane, a Division 2.1 gas, which is forbidden for shipment aboard passenger carrying aircraft.	1	2
SP15357	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15370	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	1	2
SP15378	Operational Air/Vessel	Authorizes carriage of radioactive materials aboard cargo aircraft only, under any combination of the following conditions: When the combined transport index exceeds the authorized limit of 200 per aircraft (as specified in § 175.700(b)(2)(ii)), or the separation distance criteria of § 175.702(b) cannot be met.	1	3
SP15388	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials which are forbidden for transportation by air or exceed quantity limitations, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP15392	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15397	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15408	Operational Air/Vessel	Authorizes transportation in commerce of certain liquid fuels, Class 3 materials, contained in non-DOT specification packaging seal drums or rollagons of up to 500 gallon capacity by cargo aircraft to remote locations within the State of Alaska.	1	3
SP15418	Operational Air/Vessel	Authorizes transportation in commerce of non-DOT specification fiber reinforced plastic (FRP), full composite (FC), compressed gas cylinders which are used as components in aircraft.	1	3
SP15420	Operational Air/Vessel	Authorizes carriage of radioactive materials aboard cargo aircraft only, under any combination of the following conditions: When the combined transport index exceeds the authorized limit of 200 per aircraft (as specified in § 175.700(b)(2)(ii)), or the separation distance criteria of § 175.702(a)(2)(ii) cannot be met.	1	3
SP15440	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15443	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft in remote areas of the U.S. without being subject to quantity limitations where no other means of transportation is available.	1	2
SP15467	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP15468	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft, including 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, when other means of transportation are impracticable or not available.	1	2
SP15470	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15473	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15476	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15510	Operational Air/Vessel	Authorizes transportation in commerce of liquefied petroleum gas in amounts that exceed the quantity limitations for transportation by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft only in the State of Alaska.	1	3
SP15517	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15535	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15537	Operational Air/Vessel	Authorizes offering in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	3	3
SP15541	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15547	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15556	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15559	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15560	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15583	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP15624	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15631	Operational Air/Vessel	Authorizes transportation in commerce of Division 1.1 explosives, which are forbidden, by cargo-only aircraft. This permit will not be renewed.	1	2
SP15636	Operational Air/Vessel	Authorizes transportation in commerce of certain Class 1 explosive materials which are forbidden for transportation by air, to be transported by cargo aircraft within the State of Alaska when other means of transportation are impracticable or not available.	1	3
SP15637	Operational Air/Vessel	Authorizes offering in commerce of a Division 1.1D explosive material which is forbidden for transportation by air, to be transported by cargo aircraft.	1	2
SP15652	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by cargo aircraft, including 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15654	Operational Air/Vessel	Authorizes transportation in commerce of certain hazardous materials by cargo aircraft, including 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	2
SP15664	Operational Air/Vessel	Authorizes transportation in commerce of liquefied petroleum gas in amounts that exceed the quantity limitations for transportation by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft only in the State of Alaska.	1	3
SP15710	Operational Air/Vessel	Authorizes transportation in commerce of a portable power source, containing a non-spillable battery, by passenger aircraft.	1	3
		Operational Highway/Rail/Shipper/Other		
SP5493	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of hydrogen sulfide, liquefied, a Division 2.3 material, in certain DOT specification 105J600W single-unit tank cars.	2	2
SP1862	Operational Highway/ Rail/Shipper/Other.	Authorizes use of non-DOT specification hydraulic accumulators for transportation in commerce of compressed nitrogen.	7	2
SP2709	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.1C, 1.1D and 1.3C liquid explosives and a Division 6.1 material in both UN specification and non-specification packagings.	8	3
SP5022	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.1, 1.2 and 1.3 explosives in specific temperature controlled equipment.	9	2
SP5951	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 2.3 materials in non-DOT specification tanks.	4	2
SP6293	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of spent mixed acid containing not over 3% dissolved nitroglycerin, not over 16% nitric acid, and at least 18% water by volume, in stainless steel DOT specification cargo tanks.	3	3
SP6309	Operational Highway/ Rail/Shipper/Other.	Authorizes use of a non-DOT specification tank for transportation in commerce of certain non-flammable compressed gases.	1	3
SP6743	Operational Highway/ Rail/Shipper/Other.	Authorizes use of DOT specification or non-specification portable tanks and intermediate bulk containers for the transportation in commerce of certain Division 1.5D explosives together on the same vehicle with Division 5.1 oxidizers not otherwise authorized.	2	4
SP6810	Operational Highway/ Rail/Shipper/Other.	Authorizes use of manifolded and framed non-DOT specification seamless steel cylinders for transportation in commerce of certain Division 2.2 gases.	3	3
SP7835	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain DOT specification or UN certified packagings containing Division 2.1, 2.2, 2.3, 5.1, 4.3, and Class 3 and 8 materials on the same motor vehicle.	34	3
SP7887	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Class 1 articles in limited quantities and prescribed packagings as Division 4.1 flammable solid, organic, n.o.s. Applies to small ''single-use expendable'' or ''reloadable'' rocket motors first classed as Division 1.4C or 1.4S (NA0323 or NA0276) shipped with or without their igniters classed as Division 1.4G or 1.4S under § 173.56.	28	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP7972	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of not more than 15 grams of explosive or pyrotechnic material, including waste containing explosives that have an energy density not significantly greater than that of pentaerythritol tetranitrate, classed as Division 1.4E, when packed in a special shipping container.	1	3
SP8308	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce and temporary storage incident to transportation of non-fissile or fissile exempt radioactive materials packages aboard highway vehicles when their combined transport indices exceed 50 or the separation distance criteria cannot be met.	5	3
SP8520	Operational Highway/ Rail/Shipper/Other.	Authorizes use of an alternative test method in determining whether a substance meets the definition of a Class 1.5D explosive, blasting, type E. The ''Vented Bomb Fire Test'' may be used in place of the External Fire Test prescribed in § 173.58(b).	1	2
SP8760	Operational Highway/ Rail/Shipper/Other.	Authorizes display of flammable and toxic placards, showing the UN identification numbers 1993 and 2810, respectively, on a specific company's cargo tank motor vehicles having six or more compartments, in which one or more of the compartments contain a Class 3 and/or Division 6.1 hazardous material.	1	2
SP8770	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain photographic processing materials consisting of a corrosive liquid, basic, organic, n.o.s.; corrosive liquid, basic, inorganic, n.o.s.; flammable solid, toxic, organic, n.o.s.; sodium hydroxide solution, in the same outside package.	1	2
SP8815	Operational Highway/ Rail/Shipper/Other.	Authorizes bulk transportation in commerce of certain Division 1.5D explosives in cement mixer type motor vehicles.	2	4
SP8995	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 2.2 materials in a non-DOT specification portable tank.	2	3
SP9157	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials in a non-DOT specification multi-unit tank car tank.	3	5
SP9193	Operational Highway/ Rail/Shipper/Other.	Authorizes use of transportation in commerce of a downhole logging tool (sonde) that contains an accelerator housing, one section of which is charged with sulfur hexafluoride to a pressure of 80 psig.	1	2
SP9233	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a Division 5.1 (UN1563, chromium trioxide, anhydrous) material in a non-DOT specification, 900 cubic foot, two-compartment, sift-proof covered hopper type tank motor vehicle.	1	2
SP9271	Operational Highway/ Rail/Shipper/Other.	Authorizes the deviation from rail car separation requirements for transportation in commerce of packages of Division 1.1, 1.2, 1.3 and 1.4 explosives.	5	2
SP9346	Operational Highway/ Rail/Shipper/Other.	For rail operations, authorizes setting of the hand brake and blocking a wheel in both directions of the first and last cars of a series of coupled tank cars prior to unloading.	2	5
SP9352	Operational Highway/ Rail/Shipper/Other.	Authorizes use of a non-DOT specification container for transportation in commerce of certain petroleum distillate hazardous materials.	1	2
SP9617	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of Division 1.4D flexible detonating cords containing not more than 3 grains of explosive per linear foot in the same motor vehicle or freight container with Division 1.1B, Division 1.4B or Division 1.4S detonators, electric or non-electric or Division 1.1B or Division 1.4B detonator assemblies, non-electric.	4	3
SP9649	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of munitions that contain components manufactured of depleted uranium metal, classified as Class 1 with a subsidiary hazard of Class 7. For munitions packaged as prescribed and transported with the subsidiary hazard of ''Radioactive material, excepted package—articles manufactured from depleted uranium,'' alternate radiation levels, markings, and sheathing is authorized.	5	2
SP9694	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of chlorine in MC 331 cargo tanks equipped with angle valves and pressure relief valves not presently authorized by the HMR.	5	2
SP9965	Operational Highway/ Rail/Shipper/Other.	Authorizes marking and shipment by motor vehicle of electrical transformers and/or capacitors containing bulk quantities of polychlorinated biphenyl contaminated oil as non-bulk packagings.	1	2
SP9985	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of a DOT specification 4L cylinder for transportation in commerce of carbon dioxide, refrigerated liquid and provides for the filling and discharging of a DOT specification 4L cylinder without removal from the vehicle.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP10043	Operational Highway/ Rail/Shipper/Other.	Authorizes use of inner packagings having a maximum capacity of five gallons, in non-DOT specification polyethylene bins of 30 cubic-foot capacity or UN31H1 intermediate bulk Containers (IBCs) for transportation in commerce of the residue of certain hazardous wastes classed as Class or Division 3, 5.1, 6.1, 8, or 9.	1	3
SP10045	Operational Highway/ Rail/Shipper/Other.	Authorizes highway transportation and temporary storage incident to transportation of non-fissile or fissile-exempt radioactive materials packages when their combined transport indices exceed 50 or the separation distance criteria cannot be met.	1	3
SP10247	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain small quantities of Divisions 2.1, 2.2, 2.3 and 6.1.	1	3
SP10266	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Class 3 and Division 2.1 hazardous materials in non-DOT specification containers.	1	2
SP10427	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.1D detonating cord, Division 1.3C rocket motors and Division 1.4C power device cartridges with Division 2.2 compressed gases, Division 2.3 (PIH-Zone A) liquefied gases, Class 3 flammable liquids, Division 6.1 (PIH-Zone A) poisonous liquids, Class 8 corrosive liquids, and Class 9 lithium batteries together in the same motor vehicle.	1	2
SP10442	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain unapproved Division 1.1A, 1.1D and 1.3C waste explosive substances on the same motor vehicle with waste Division 4.1 flammable solids.	11	2
SP10458	Operational Highway/ Rail/Shipper/Other.	Authorizes use of DOT specification 111A100W2 tank car tanks loaded with certain sulfuric acids or sulfur dioxide, to remain attached to transfer connections when the unloading process is discontinued.	1	5
SP10497	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain non-DOT specification stainless steel tanks containing dinitrogen tetroxide.	1	3
SP10656	Operational Highway/ Rail/Shipper/Other.	Authorizes one-way transportation in commerce by highway or rail of shipments of radioactive scrap metal and related metal recycled materials.	1	3
SP10695	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of ethylene oxide packaged in aluminum cartridges within a UN4G fiberboard box. For domestic transportation only, this SP also authorizes packages to be transported with a flammable gas (Division 2.1) label instead of both poison gas (Division 2.3) and flammable gas labels.	2	2
SP10753	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of non-DOT specification packages for transportation of aluminum phosphide in privately owned pest control vehicles without placards.	1	3
SP10814	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale, and use of certain packagings for use in the transportation of sulfur hexafluoride.	3	3
SP10832	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain scrap airbag inflators, seat belt pretensioners and/or airbag modules classed as Division 1.3C.	1	3
SP10904	Operational Highway/ Rail/Shipper/Other.	Authorizes use of a classification test method for the determination of skin corrosivity as an alternative to a procedure specified in the HMR.	1	3
SP10921	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain flammable liquids, which are packaged in combination packagings that are not subject to the HMR.	3	2
SP10949	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of lab pack quantities of cyanides on the same motor vehicle with non-lab packed acidic materials not to exceed 55 gallons per packaging.	6	5
SP10993	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain liquid fuels in non-DOT specification portable rubber containers of up to 500 gallon capacity by helicopter within and to only remote areas of the United States.	1	2
SP10996	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain rocket motors and reloadable rocket motor kits as Division 1.4C articles, explosive, n.o.s., when shipped in prescribed quantities and packagings. Exempts shippers from the §172.101 Table, in that explosive articles with propellant charges in excess of 62.5 grams must be classed as Division 1.3C.	49	2
SP11020	Operational Highway/ Rail/Shipper/Other.	Authorizes tank cars containing chlorine, Division 2.3, to remain standing with unloading connections attached when no product is being transferred, provided a minimum level of monitoring is maintained.	2	5
SP11031	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale, and use of non-DOT specification bulk packagings to be used for transportation in commerce of NA3082, UN3266.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP11107	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.4 explosive devices which have not been examined and approved to be shipped as Division 1.1 devices.	1	3
SP11180	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of metal tubing which contains certain hazardous materials and exempts the metal tubing from the packaging, marking, labeling, and placarding requirements of the HMR.	1	2
SP11185	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of solid regulated medical waste in a non-DOT specification packaging consisting of a bulk outer packaging and non-bulk inner packagings.	1	3
SP11227	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain oil and gas well tools classed as Division 1.4C cartridges, power devices in specially designed motor vehicles and offshore tool pallets.	2	3
SP11230	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.1B and 1.4B non-electric detonator assemblies without packagings in the same motor vehicle with Division 1.1D and/or 1.5D explosives and/or Division 5.1 oxidizers when those detonator assemblies are placed within partitioned IME Safety Library Publication No. 22 containers or certain described compartments.	2	5
SP11265	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of ethylene oxide packaged in aluminum cartridges within a UN 4G fiberboard box with a Division 2.1 label instead of both Division 2.3 and 2.1 labels.	2	2
SP11274	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of fire extinguishers in privately owned and military owned vehicles on cargo vessels, as not subject to the requirements of the HRM for documentation, marking, and that each fire extinguisher must be shipped as an inner packaging.	1	2
SP11286	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of small quantities of hazardous materials which are not authorized under § 173.4, specifically Division 2.3 materials.	2	3
SP11294	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain lab pack quantities of hazardous materials with other materials in lab packs, with partial relief from certain segregation requirements.	1	5
SP11329	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of aluminum phosphide, aluminum phosphide pesticides and magnesium phosphide in specially designed packages, by private motor vehicles without placards.	3	3
SP11348	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of Ammonium perrhenate (solid), classed as Division 5.1 under the proper shipping name oxidizing solid, n.o.s., UN1479 instead of classifying it as a Class 7 material.	1	2
SP11406	Operational Highway/ Rail/Shipper/Other.	Authorizes one-way transportation in commerce by highway or rail of shipments of liquid or solid waste that has low levels of radiation.	1	3
SP11432	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.4 igniters packed with certain Division 1.4 detonators. These materials may be shipped on the same motor vehicle, cargo vessel or cargo aircraft with Class 1 jet perforating guns, detonating cords, commercial shaped charges or power device cartridges, subject to certain packaging and safety measures.	2	2
SP11434	Operational Highway/ Rail/Shipper/Other.	Authorizes tank cars containing certain Class 3 and 6.1 hazardous materials to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring, as specified, is maintained.	1	3
SP11440	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 6.1 materials which are toxic by inhalation in polyethylene drums or composite packagings which are stacked on a transport vehicle.	1	3
SP11481	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, mark, and sale of certain shock absorbers and struts containing a non-flammable gas, for transportation in commerce as accumulators.	1	5
SP11489	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain unapproved or unidentified as approved, air bag inflators or air bag modules or seat belt pretensioners as Division 1.4C explosives articles.	7	2
SP11502	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce, by highway, of hazardous materials prepared in accordance with 171.23 and the ICAO Technical Instructions, regardless of whether any part of the transportation is by aircraft.	2	2
SP11513	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain forbidden Division 1.1A explosive substances, unapproved Division 1.1C waste explosive substances and unapproved Division 1.2G explosives articles with packaging and operational controls.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP11583	Operational Highway/ Rail/Shipper/Other.	Authorizes, in the State of Alaska, transportation in commerce, of Class/Division 2.1, 2.2, 3, combustible liquids, 6.1 PG II and III, 8 and/or 9 materials in mixed trains (cargo and passenger) trains.	1	3
SP11629	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain forbidden Division 1.2G, 1.3G and 1.4G explosive articles which will likely cause a dangerous evolution of heat, or flammable gases from moisture exposure due to damage, improper storage or packaging failures.	1	2
SP11634	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce, by motor vehicle, of materials classed as ORM–D consumer commodities without inner packagings having to be packed, secured and cushioned within the outer packaging as required by the HMR, subject to certain conditions and limitations.	1	2
SP11646	Operational Highway/ Rail/Shipper/Other.	Authorizes discharge of certain Class 3, Division 6.1 and Class 8 and Class 9 liquids from a DOT specification drum without removing the drum from the vehicle on which it is transported.	7	3
SP11693	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of fish meal treated with NATUROX(™) or NATUROX(™) premium liquid antioxidant instead of ethoxyquin as required by § 173.218(c).	1	2
SP11771	Operational Highway/ Rail/Shipper/Other.	Authorizes the offering of tank cars, containing Class 3 materials and combustible liquids, with no inspection of the top fittings and appurtenances and the unloading of these materials without opening and blocking the manway cover.	1	3
SP11789	Operational Highway/ Rail/Shipper/Other.	Authorizes tank cars, containing butyl acrylates, stabilized, butadienes, stabilized, or styrene monomer, stabilized, to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring, as specified is maintained.	2	3
SP11804	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a safety kit containing not more than two highway fusees, with burning time not exceeding 15 minutes each, a tire inflator aerosol and a fire extinguisher as a consumer commodity.	1	2
SP11809	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of consumer commodities or waste consumer commodities from more than one offeror (e.g., manufacturer, distribution center, or retail outlet) to a ''designated facility'' as defined in § 171.8.	6	4
SP11818	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of non-DOT specification containers that are installed in spacecraft or components of spacecraft and overpacked in a wood or metal box containing certain hazardous materials.	12	3
SP11834	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Class 3 adhesives with Division 5.2 liquid organic peroxides as part of a two-component adhesive mixing apparatus, subject to certain prescribed packaging and special provisions.	1	2
SP11839	Operational Highway/ Rail/Shipper/Other.	Authorizes attendants of a cargo tank loading facility to remain in a warming shack during loading operations which is not within the required 25 feet from the cargo tank.	1	3
SP11900	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of small quantities of a wood preservative containing methyl isothiocyanate, a Division 6.1, Packing Group I, Hazard Zone B material, to be shipped in accordance with the small quantity exceptions under § 173.4.	1	2
SP11967	Operational Highway/ Rail/Shipper/Other.	Authorizes tank cars, containing various Class 3, 8, and 9 hazardous materials, to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring, as specified, is maintained.	2	3
SP12046	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of laboratory reagent chemicals packaged in lab packs to facilitate relocation of laboratory facilities.	4	2
SP12065	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of Class 3 flammable liquids with flash points determined by an apparatus for flash point testing not currently authorized in § 173.120(c).. Flash points of volatile organic liquids may as an alternative be determined by means of a Grabner MiniFlash Flashpoint Analyzer.	6	2
SP12102	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain unapproved Class 1 explosive materials desensitized by wetting with water, alcohol or other suitable diluent so as to eliminate their explosive properties.	47	3
SP12118	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of non-DOT specification cryogenic gas system consisting of DOT specification 4L cylinders and non-DOT specification pressure vessels for transportation in commerce of argon, nitrogen and oxygen, refrigerated liquid.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP12240	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of propane, Division 2.1, in DOT specification cylinders aboard passenger-carrying aircraft, when other means of transportation are impractical or not available.	1	2
SP12241	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain wetted metal catalyst classed as Division 4.2 material in bulk containers.	1	3
SP12325	Operational Highway/ Rail/Shipper/Other.	Authorizes tank cars containing hazardous materials to remain standing with unloading connections attached, provided that a minimum level of monitoring is maintained and that specially designed hoses, capable of preventing a catastrophic uncontrolled release of product, are utilized.	16	5
SP12358	Operational Highway/ Rail/Shipper/Other.	Authorizes shipments of lighters to be transported in commerce from the U.S. to a facility in Canada, without marking the SP number on shipping papers and packagings, or applying labels, as required by the HMR.	1	2
SP12379	Operational Highway/ Rail/Shipper/Other.	Authorizes certain unloading attachments to remain attached to tank cars when no unloading of phosphoric acid is being conducted.	1	5
SP12396	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of low production lithium metal batteries packed with equipment containing certain non-DOT specification cylinders filled with compressed nitrogen gas.	1	2
SP12412	Operational Highway/ Rail/Shipper/Other.	Authorizes discharge of liquid hazardous materials from certain UN intermediate bulk containers (IBCs) and DOT specification 57 portable tanks without removing them from the vehicle on which they are transported.	204	2
SP12443	Operational Highway/ Rail/Shipper/Other.	Authorizes tank cars, containing certain hazardous materials to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring is maintained.	35	5
SP12622	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials from one facility to another as not subject to the shipping paper and placarding requirements in part 172.	1	2
SP12661	Operational Highway/ Rail/Shipper/Other.	Authorizes the return shipment by motor vehicle of hazardous materials that have been accepted for transportation, transported, and subsequently determined to be non-compliant with the HMR.	1	4
SP12744	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of electric storage batteries together with materials of trade (MOTs) and a cesium-containing apparatus in the same motor vehicle as not subject to the requirements of the HMR.	2	2
SP12753	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of dichlorosilane in certain DOT specification seamless steel cylinders that have a water capacity exceeding 1000 pounds.	1	2
SP13002	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of compressed nitrogen gas in accumulators that are an integral part of a launcher assembly.	1	3
SP13034	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.4 explosives (cap type small arms primers) in non-DOT specification packagings in company owned and operated vehicles between manufacturing facilities without labels or markings.	3	3
SP13078	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 2.2 gases in approximately 198 DOT Class 112 and 114 tank cars without the use of head shields or thermal protection.	1	2
SP13102	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain non-DOT specification packagings, described as actuators, charged with limited quantities of various hazardous materials. The actuators are transported separately or as part of a valve assembly.	6	2
SP13179	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of approved cigarette lighters which have been removed from their inner packaging and are being sent for disposal.	55	5
SP13181	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of high voltage accelerators for transportation in commerce of sulfur hexafluoride.	1	3
SP13187	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of non-DOT specification packaging described as a radiation detection survey meter containing a plastic ionization chamber for transportation in commerce of certain Division 2.2 materials.	1	3
SP13235	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a DOT specification 4L cylinder containing certain refrigerated liquids which may be filled and discharged without removal from the motor vehicle.	13	3
SP13246	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of cigarette lighters in certain non-UN Standard outer packagings.	1	5
SP13262	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain cesium devices in alternative packagings and is exempt from labeling and placarding requirements.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP13301	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials for a distance of approximately 400 feet, not subject to the shipping paper, marking and labeling requirements in part 172.	1	2
SP13322	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce for disposal purposes of certain Class 1 waste hazardous materials in non-bulk packagings, by private vehicle in a specially designed bomb-disposal trailer as the outer packaging.	1	4
SP13350	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of spacecraft auxiliary power units containing the residue of hydrazine, anhydrous.	3	3
SP13355	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of specially designed combination packagings for transportation in commerce of certain hazardous materials without hazard labels or placards.	1	3
SP13426	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of non-DOT specification containers (metal, single trip, inside containers, described as hermetically sealed electron tube radiation sensors) for transportation in commerce of Division 2.2 materials (argon, compressed).	1	3
SP13487	Operational Highway/ Rail/Shipper/Other.	Authorizes one-time, one-way transportation in commerce of certain infectious materials in special packagings transported by a contract carrier.	1	2
SP13546	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials along a public road of not more than 50 yards without shipping papers, marking, labeling, and emergency response information on the transport vehicle.	1	3
SP13577	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a Division 2.2 material as a limited quantity in certain non-DOT specification inside metal containers conforming with all requirements applicable to a DOT specification 2Q inner non-refillable metal receptacle, except as specified.	1	3
SP13963	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of a specially designed device containing Class 7 radioactive materials. The device is a reactor head package to be used to transport commercial nuclear power plants reactor vessel heads with or without the control rod drive mechanisms attached.	1	3
SP13976	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain UN Standard combination packages which contain limited quantities of a wood preserver containing methyl isothiocyanate, a Division 6.1, Packing Group I, Hazard Zone B material, in utility vehicles that are not placarded.	1	2
SP14183	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of non-DOT specification packagings described as hermetically sealed electron tube radiation sensors for use in the transportation in commerce of Division 2.2 and Division 2.1 materials.	1	3
SP14187	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a certain space satellite assembly containing non-DOT specification pressure vessels pressurized with compressed hydrogen, which is a component part of a nickel-hydrogen battery.	1	3
SP14188	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of a non-refillable, non-DOT specification inside metal container conforming with all regulations applicable to a DOT specification 2Q, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP14205	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of a non-DOT specification, non-refillable plastic aerosol container of not more than 30 fluid ounces containing a Division 2.2 material consisting of a non-toxic propellant gas and a non-hazardous material.	1	3
SP14227	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of non-DOT specification metal refueling tanks containing certain Class 3 liquids. The Class 3 liquids will be discharged from the refueling tanks without removing the refueling tanks from the vehicle on which they are transported.	1	3
SP14236	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of a non-DOT specification, non-refillable, inside container conforming to all regulations applicable to a DOT specification 2Q, except as specified, for transportation in commerce of certain Division 2.1 material.	1	3
SP14249	Operational Highway/ Rail/Shipper/Other.	Authorizes shipment of Division 1.4S waste shotshell cartridges in non-DOT specification bulk containers for disposal.	1	2
SP14267	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of fissile uranium contaminated equipment containing up to 252 grams of uranium-235 to be transported in US DOT 7A, type A packaging.	11	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14274	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain DOT specification cylinders as part of a portable emission measurement system that releases a controlled amount of certain Division 2.1 and Division 2.2 materials during transportation under certain specified terms and conditions.	2	2
SP14281	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain scrap airbag inflators, seat belt pretensioners and/or airbag modules classed as Division 1.3C, subject to certain packaging and special provisions.	2	2
SP14282	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain detonators, detonator assemblies, detonators for ammunition, detonating fuses and igniting fuses on the same motor vehicle with any other Class 1 explosives when they are in separate and isolated (i.e. not adjacent) cargo-carrying compartments powered by the same tractor.	36	3
SP14283	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of non-DOT specification bulk packages containing uranium mill tailings and debris with low levels of radioactivity between specified processing facilities and a specified DOE owned disposal facility. Alternative requirements for hazard communication and packaging are authorized.	5	3
SP14287	Operational Highway/ Rail/Shipper/Other.	Authorizes one-time transportation, for source disposal purposes only, of certain portable nuclear gauges.	3	3
SP14315	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of non-DOT specification metal refueling tanks containing certain Class 3 liquids. The Class 3 liquids will be discharged from the refueling tanks without removing the refueling tanks from the vehicle on which they are transported.	1	3
SP14329	Operational Highway/ Rail/Shipper/Other.	Authorizes one-time transportation, for source disposal purposes only, of certain portable nuclear gauges.	2	3
SP14373	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain compressed gas fueled and liquid-fueled cigarette lighters in checked baggage of passenger aircraft when packaged in a rigid, vapor-tight non-DOT specification solid plastic packaging that prevents any movement of the lighter during transport.	1	3
SP14375	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.1A explosives in a solution of ethanol and water when transported in a specially designed packaging configuration by motor vehicle.	1	2
SP14385	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of placarded railroad tank cars containing hazardous materials that are transiting the International Bridge from Mexico to Laredo, TX prior to the mandated safety inspections.	2	2
SP14388	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain desensitized explosives in bulk by motor vehicle.	2	2
SP14395	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a Division 6.1 liquid soil fumigant in a non-DOT specification bulk packaging mounted on a farm tractor or wagon.	2	2
SP14414	Operational Highway/ Rail/Shipper/Other.	Authorizes one-way transportation in commerce of certain hazardous materials (articles, explosive, n.o.s., 1.3L, UN0356, and lithium batteries, 9, UN3090) for a certain launch vehicle.	1	2
SP14415	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain gas and liquid fueled lighters in checked baggage of passenger aircraft when packaged in a rigid, vapor-tight non-DOT specification solid plastic box that will prevent any movement of the lighter during transport.	1	3
SP14422	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of 4 ounces or less of ethyl chloride packaged in a DOT–2P or DOT–2Q container, as a consumer commodity.	2	3
SP14424	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a DOT specification 4L cylinder containing carbon dioxide, refrigerated liquid which may be filled and discharged without removal from the motor vehicle.	2	2
SP14436	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of hazardous materials that are toxic by inhalation by rail without meeting the requirements of § 174.14 for expedited shipments.	1	2
SP14452	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of dried biomeal, solid, in non-DOT specification sift-proof roll-on/roll-off bulk bins.	2	2
SP14455	Operational Highway/ Rail/Shipper/Other.	Authorizes the one-time, one-way transportation in commerce of steam generators and steam generator sections that have been removed from service in commercial nuclear power plants, and contain Class 7 radioactive material, to be classified as surface contaminated objects (SCO–II) and transported as non-specification packages from a licensed shipping facility to a licensed receiving facility.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14460	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of non-DOT specification permeation devices with a maximum volume of 6cc containing anhydrous ammonia without shipping papers, labeling and placarding.	1	2
SP14494	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of cylinders that are marked with obsolete proper shipping descriptions to allow for their return.	20	3
SP14500	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a DOT specification 4L cylinder containing oxygen, refrigerated liquid, which may be filled and discharged without removal from the motor vehicle.	1	2
SP14518	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of primers, cap type, UN0044 in non-DOT specification packaging when transported by private carrier for a distance of 10 miles or less.	3	2
SP14530	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a PG III flammable liquid in alternative packaging (a neutron scatter camera) by motor vehicle and cargo vessel.	1	2
SP14547	Operational Highway/ Rail/Shipper/Other.	Authorizes one-way transportation in commerce of scrap/waste cartridges, small arms, blank in a non-DOT specification bulk container by motor vehicle.	1	2
SP14551	Operational Highway/ Rail/Shipper/Other.	Authorizes surface transportation in commerce of certain explosives as dangerous good in apparatus, UN3363 instead of the EX classification of cartridge, power device, UN0323.	1	2
SP14599	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of packages of non-hazardous material identified as ''biological substance, Category B'', for purposes of shipping and packaging drills conducted to evaluate bioterrorism, chemical terrorism and pandemic influenza preparedness.	1	2
SP14600	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of up to 5,000 lighters per motor vehicle not subject to the requirements of subparts C through H of Part 172 and part 177 in its entirety.	2	2
SP14640	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of packages containing very small quantities of certain PG I hazardous materials, identified as analytical standards, that are not authorized for transportation aboard passenger-carrying aircraft under the excepted quantity provisions of § 173.4a.	1	3
SP14649	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.4C and 1.4S small arms ammunition in non-DOT specification rugged steel containers by motor vehicle exclusively between company facilities.	1	2
SP14657	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of specified radioactive materials in designated DOT specification 6M and 20WC–1 packagings on or after October 1, 2008, in order to allow a transition period to performance oriented package use.	1	2
SP14691	Operational Highway/ Rail/Shipper/Other.	Authorizes the return shipment by motor vehicle of hazardous materials that have been accepted for transportation, transported and subsequently determined to be non-compliant with the HMR.	1	4
SP14718	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of a DOT specification cylinder conforming in all respects to DOT specification 39, except for a procedure in completing the marking requirement, for the transportation in commerce of certain hazardous materials.	1	3
SP14722	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale, and use of a non-DOT specification packaging described as a hermetically-sealed electron tube device for transportation in commerce of certain hazardous materials.	1	2
SP14728	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of specified radioactive materials in a designated DOT specification 20WC–5 packaging after October 1, 2008, in order to allow a transition period to performance oriented package use.	3	3
SP14732	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of reconditioned (used) refrigerating machines containing a group A1 refrigerant by motor vehicle.	1	2
SP14768	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation of certain materials (infectious substances and biological substances) in alternative packaging (freezers) transported in motor vehicles.	1	2
SP14772	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of specified type B and/or fissile quantities of radioactive materials in designated U.S. Nuclear Regulatory Commission (NRC) authorized packages, after October 1, 2008, in order to allow a transition period to performance oriented package use.	2	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary	Holders	Code
SP14789	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.1B and 1.4B detonator assemblies with any other Class 1 explosives in the same motor vehicle provided they are packaged in separate and isolated cargo-carrying compartments.	1	3
SP14801	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials as materials of trade when transported by a dedicated contract carrier and they comply with all the provisions of § 173.6.	1	2
SP14814	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 2.2 compressed gases in non-DOT specification cylinders to support an International Space Station project.	1	2
SP14823	Operational Highway/ Rail/Shipper/Other.	Authorizes the return shipment by motor vehicle of hazardous materials that have been accepted for transportation, transported, and subsequently determined to be non-compliant with the HMR.	1	4
SP14848	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain DOT specification cylinders as part of a portable emission measurement system, that release a controlled amount of certain Division 2.1 and 2.2 materials without removing the cylinder from the vehicle on which it is transported.	1	2
SP14865	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of liquefied petroleum gas in a specially designed vault when transported by railroad in Alaska.	1	3
SP14909	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of cylinders of compressed oxygen solely and specifically intended for human health care and veterinary services only, when no other practical means of transportation exist, without their outer packaging being capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test.	1	3
SP14915	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of UN1992, flammable liquid, n.o.s., PG III and UN1219, isopropanol, PG II across a public road, from one part of a plant to another, as essentially not subject to parts 172 and 173.	3	2
SP14933	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 6.2 infectious substances and biological substances in special packagings in a dedicated truck by highway.	1	2
SP14957	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of approximately 80,000 packages under the terms of § 173.4 with alternative marking to deplete carton stock.	1	3
SP14967	Operational Highway/ Rail/Shipper/Other.	Authorizes one-time transportation in commerce of certain hazardous materials to a new site approximately 5 miles away as exempt from certain requirements of the HMR provided alternative packaging and operational controls are met as specified.	1	2
SP14969	Operational Highway/ Rail/Shipper/Other.	Authorizes one-way transportation in commerce of certain Category A infectious substances in special packagings in a dedicated truck by highway via pre-determined routes.	1	2
SP14974	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of lead batteries from more than one shipper without voiding the exception in § 173.159(e).	1	4
SP15001	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of cylinders transported by private or contract motor carrier with alternative marking and shipping paper documentation.	1	2
SP15059	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of helium, Division 2.2 in non-DOT specification packaging.	2	3
SP15071	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a cartridge, power device and air, compressed, article, n.o.s. (cartridges, power device installed on equipment and non-flammable, compressed gas) and helium, compressed in non-DOT specification cylinders.	1	3
SP15097	Operational Highway/ Rail/Shipper/Other.	Authorizes one-way transportation in commerce of certain unapproved toy caps or fireworks for testing.	1	2
SP15130	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements.	1	3
SP15131	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale and use of DOT specification 113A90W tank cars for transportation in commerce of certain non-flammable cryogenic liquids.	1	2
SP15161	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of lead batteries from more than one shipper without voiding the exception in § 173.159(e).	21	4
SP15166	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations attached to or suspended from an aircraft, in remote areas of the U.S. only, without being subject to quantity limitations.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15198	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of residues of titanium tetrachloride contained in disassembled process equipment in non-DOT specification packaging across public roads of not more than seven tenths of a mile, from one part of a plant to another, without shipping papers, marking, labeling, and placarding.	1	2
SP15206	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of electric double layer capacitors with an energy storable capacity of not more than 10Wh, and the capacitors installed in equipment, in certain packagings, without being subject to the HMR.	3	5
SP15250	Operational Highway/ Rail/Shipper/Other.	Authorizes the Department of Energy to examine, class, and approve new explosives that are tested to a newer revision of the Department of Defense Ammunition and Explosive Hazard Classification Procedures (TB 700–2) that has not been incorporated by reference.	2	2
SP15257	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation of certain hazardous materials, a short distance from one facility to another, in intermediate bulk containers (IBC) not otherwise authorized.	1	3
SP15279	Operational Highway/ Rail/Shipper/Other.	Authorizes one-time transportation in commerce of Division 6.2 materials in special packaging transported by a contract carrier for short distances by motor vehicle (less than 2 miles).	1	2
SP15351	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of packages of thermometers containing certain Division 2.1 material as excepted quantities by aircraft.	1	2
SP15364	Operational Highway/ Rail/Shipper/Other.	Authorizes one-way transportation in commerce of Division 1.4G fireworks in non-DOT specification fiberboard non-bulk outer packagings whentransported by private motor carrier or contract motor carrier.	1	3
SP15368	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of flammable liquid, n.o.s., containing methanol in soil samples as ''Dangerous Goods in Excepted Quantities'' when transported and packaged in accordance with § 173.4a and as specified.	1	2
SP15386	Operational Highway/ Rail/Shipper/Other.	Authorizes one-time, one-way transportation in commerce of five (5) 5-gallon buckets containing wetted waste primers and three (3) 5-gallon buckets containing wetted waste propellant by a contract carrier for disposal without an EX approval.	1	2
SP15425	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a certain family of hydrazine compounds with primary hazard classes of Class 8 and Division 6.1 on the same motor vehicle without regard to segregation requirements.	1	3
SP15446	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of organic peroxides with hazard warning labels that were authorized prior to the HM–215I (PHMSA–2006–25476) compliance date of January 1, 2011.	1	3
SP15448	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Class 1 materials under an Interim Hazard Classification (IHC).	1	2
SP15452	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of oxygen in certain DOT specification 39 cylinders that have their pressure relief devices set to an alternative burst pressure range.	1	3
SP15471	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of spacecraft subsystem fuel propellant tanks containing the residue of hydrazine, anhydrous which does not meet the requirements of § 173.172.	1	2
SP15516	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain waste hazardous materials between plants for less than one half mile by private motor vehicle without shipping paper documentation.	1	2
SP15577	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain Division 1.4S small arms cartridges in non-DOT specification bulk packagings without labels and markings for a distance not to exceed 200 yards by motor vehicle on a public road, subject to certain limitations and requirements.	1	2
SP15580	Operational Highway/ Rail/Shipper/Other.	Authorizes movement of freight trains utilizing a ''light locomotive consist'' of two helper locomotives attached to the rear end of a stalled train without positioning buffer cars separating these locomotives from the rear placarded hazardous materials cars in the train.	1	2
SP15599	Operational Highway/ Rail/Shipper/Other.	Authorizes manufacture, marking, sale, and use of hydrogen storage systems for use in fuel cells for a period of not more than 1 year. The hydrogen storage systems utilize non-DOT specification cylinders containing hydrogen absorbed in metal hydride.	1	2
SP15620	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce by motor vehicle of approximately 36,000 non-DOT specification containers filled with 1,1,1,2-tetrafluoroethane. This SP will not be renewed.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15655	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of certain waste pyrotechnic material that has not been approved under 49 CFR 173.56(b) by motor vehicle.	1	3
SP15666	Operational Highway/ Rail/Shipper/Other.	Authorizes transportation in commerce of a specific product containing a marine pollutant (alcohol C–12—C–16 poly (1–6) ethoxylate), as not meeting the § 171.8 definition of a marine pollutant.	1	2
SP15689	Operational Highway/ Rail/Shipper/Other.	Authorizes discharge of a Division 2.1 material from an authorized DOT specification cylinder without removing the cylinder from the vehicle on which it is transported.	1	3
		Non-Bulk Packaging Specifications/IBCs		
SP4354	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of methyl chloroformate in UN Standard 1H1 drums and 6HA1 composite packagings which do not meet the overpack requirements of § 173.226(b).	1	3
SP5112	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain Class 1 explosives (nitroglycerin, desensitized UN0143) in a specially designed container. The prescribed packaging is a specially designed kettle drum type aluminum container permanently mounted on a specially designed strong aluminum base.	1	3
SP6299	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification portable tanks conforming with all regulations applicable to a DOT specification MC 338 cargo tank motor vehicle, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP6971	Non-Bulk Packaging Specifications/IBCs.	Authorizes a gross mass of the completed packaging exceeding the 29 kg gross weight limit specified in § 173.4 for transportation in commerce of packages containing small quantities of hazardous materials, identified as analytical standards.	1	3
SP8215	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain Division 1.1, 1.3 and 1.4 explosives, Division 4.1 flammable solids and ORM–D materials in non-DOT specification packagings without labels and EX-number markings for a distance not to exceed 7/10 mile by cargo motor vehicle or rail freight.	1	3
SP8445	Non-Bulk Packaging Specifications/IBCs.	Authorizes the transportation by private or contract motor carrier of certain shipments of various liquid or solid hazardous substances and hazardous wastes packed in inside plastic, glass, earthenware or metal containers, not exceeding one-gallon capacity, overpacked in a UN specification 1A2 or 1B2 metal drum, a UN 1G fiber drum or a UN1H2 plastic drum, not exceeding 220 liters (55-gallon) nominal capacity only for the purposes of disposal, repacking or re-processing.	43	2
SP8451	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of not more than 25 grams of solid explosive or pyrotechnic material, including waste-containing explosives that have an energy density not significantly greater than that of pentaerythritol tetranitrate, classed as Division 1.4E, when packed in a special shipping container.	175	2
SP8472	Non-Bulk Packaging Specifications/IBCs.	Authorizes use of non-DOT specification containers to transport Argon, compressed. The prescribed packaging is a non-DOT specification, metal, single trip, inside container, described as a detector or ionization chamber, having a design (operating) pressure of 300 psig and an 85 cubic inch maximum water capacity. The detector assemblies must be shipped in a suitably suspended and cushioned strong outside container.	1	2
SP8748	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of boron trifluoride, Division 2.3, in a non-DOT specification metal pressure envelope contained in a radiation detection system. The prescribed packaging is a radiation detection system having a non-DOT specification metal pressure envelope with welded or soldered joints, and brazed ceramic to metal insulator feed-through assemblies.	1	2
SP9672	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain Division 4.2 and Division 4.3 materials in an MC 330 or MC 331 cargo tank with a filling/discharge opening that does not have a remote self-closing internal valve.	1	3
SP9722	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of UN1H1 plastic drums to be used for transportation in commerce of nitric acid with not more than 40% nitric acid.	2	3
SP10048	Non-Bulk Packaging Specifications/IBCs.	Authorizes use of a UN 1A2 drum with inside non-DOT specification metal containers for transportation in commerce of certain hazardous materials.	7	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP10501	Non-Bulk Packaging Specifications/IBCs.	Authorizes repair and reuse of a certain UN13L2 flexible intermediate bulk container (IBC) for transportation in commerce of certain solid hazardous materials.	1	2
SP10529	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of certain non-DOT specification packagings. The prescribed packagings are metal, single trip, inside containers, described as hermetically sealed electron tube radiation sensors containing certain Division 2.1 and 2.2 gases.	1	2
SP10880	Non-Bulk Packaging Specifications/IBCs.	Authorizes the transportation in commerce of ammonium nitrate-fuel oil mixture (ANFO), Division 1.5, in reusable, flexible intermediate bulk containers (IBCs) type UN 13H3 or UN 13H4 conforming to subpart N and O of part 178.	11	2
SP10984	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of specially designed UN 1A1 steel drums for the shipment of dichlorosilane, subject to certain limitations and requirements.	2	2
SP11077	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain Division 6.1 materials, as well as nitric acid, in a limited number of UN1A1 and DOT 42B drums which do not meet all requirements of §§ 173.226 and 173.227.	3	3
SP11156	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of NA0331, UN1942 and UN0331 in non-DOT specification multi-wall plastic-lined paper bags.	57	2
SP11167	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of a non-DOT specification double containment packaging for transportation in commerce of various hazardous materials.	1	2
SP11215	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain hazardous materials, contained in a solid fuel rocket. The SP covers launch operations and non-launch operations associated with vehicle deployment with or without a spacecraft.	1	2
SP11220	Non-Bulk Packaging Specifications/IBCs.	Authorizes the refilling and reuse of certain packagings, containing liquid hazardous materials authorized by § 172.101 and part 173 to be shipped in composite packagings with a steel outer packaging, which have not been subjected to the leakproofness test in accordance with § 173.28(b)(2).	4	3
SP11401	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain cesium devices in alternative packaging with no hazard labels.	10	2
SP11443	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain organic peroxides, Division 5.2, in UN 31A intermediate bulk containers (IBCs).	2	2
SP11606	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain non-DOT specification steel drums and certain UN1A1 and UN1A2 steel drums without the marking of the symbol of the manufacturer and the initials "USA" to be shipped without leakproofness testing.	4	2
SP11624	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce by motor vehicle, rail freight and cargo vessel of certain waste paints and paint related materials, Class 3, in metal or plastic pails, packed in cubic yard boxes, dump trailers, and roll-off containers.	114	2
SP11647	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3AA cylinder, without billets being inspected after parting as specified, for transportation in commerce of certain hazardous materials.	2	3
SP11670	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain hazardous materials in a non-DOT specification cylinder used for oil well sampling.	1	2
SP11753	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce by motor vehicle of certain UN1H1 drums containing ammonia solutions placed within temperature-controlled vehicles.	2	2
SP11779	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of gasoline in non-bulk polyethylene jerricans, to remote areas in support of log-cutting operations. The jerricans are loaded on external cargo racks of helicopters.	1	2
SP11883	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification volumetric meter provers, manufactured from steel, have capacities ranging from 100 gallons to 1,500 gallons, and mounted on motor vehicles for transportation in commerce of certain Class 3 materials.	1	2
SP11892	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of certain DOT specification 51 steel portable tanks manufactured in accordance with Section VIII, Division 2 of the ASME Code instead of Division 1. The portable tanks, mounted in ISO frames, are authorized for transportation in commerce of Division 2.1 and 2.2 materials.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP11924	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of UN13H3 or UN13H4 flexible intermediate bulk containers (IBCs), UN11HG2W Composite IBCs, and UN6HH1 composite packagings for use as the outer packaging for lab pack applications.	2	2
SP11932	Non-Bulk Packaging Specifications/IBCs.	Authorizes motor vehicle transportation in commerce of oxygen generators in non-DOT specification packaging when installed in deployment modules and personal service units.	3	2
SP11947	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of multiple non-DOT specification containers, manifolded together within a frame and securely mounted on a truck chassis, for transportation in commerce of certain hazardous materials.	1	2
SP11953	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming to a DOT specification 4BW, except for the maximum water capacity.	1	3
SP12162	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain non-DOT specification cylinders containing Division 2.2 materials for use by the U.S. Department of Defense.	1	2
SP12195	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of metal intermediate bulk containers meeting UN design Type 31A as prescribed in part 178, except for minimum thickness requirements, for transportation in commerce of certain hazardous materials.	1	3
SP12268	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of the residue of certain Class 8 materials in non-DOT specification stainless steel tanks with capacities of 30, 75, or 105 gallons.	1	2
SP12338	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain non-DOT specification cylinders described as high pressure purifiers containing a Division 4.2 material.	1	3
SP12340	Non-Bulk Packaging Specifications/IBCs.	Authorizes use of certain UN3H1 jerricans, containing ammonia solutions, which exceed the vapor pressure requirements.	1	2
SP12402	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT specification 3BN cylinder except as specified, for transportation in commerce of certain hazardous materials.	2	3
SP12440	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of a non-DOT specification cylinder conforming with all regulations applicable to a DOT–3AL specification cylinder, except as specified, for transportation in commerce of certain hazardous materials.	1	2
SP12475	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce certain hazardous materials in certain UN1A1 drums and the reuse of those UN1A1 drums without leakproofness testing.	1	2
SP12481	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain non-DOT specification packagings, described as actuators, charged with limited quantities of various hazardous materials.	1	2
SP12609	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation of a caustic alkali liquid (decontamination solution) in packages filled prior to October 1, 1991 meeting the HMR in effect on September 30, 1991.	1	2
SP12633	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of gasoline in a non-DOT specification, non-bulk packaging (drum) mounted in a heli-torch frame.	1	2
SP12675	Non-Bulk Packaging Specifications/IBCs.	Authorizes use of non-specification, reusable high-strength plastic or metal containers or other dedicated handling devices, for return transportation of airbag modules and seat-belt pretensioners from the assembly plant to the manufacturer.	1	4
SP12688	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of nitric acid in drums that do not meet the minimum thickness requirements.	3	2
SP12705	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of nitric acid in drums that do not meet the minimum thickness requirements.	1	2
SP12748	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain Division 1.1B, 1.1D, and 1.4D materials in non-DOT specification packaging for neutron radiography.	2	2
SP12750	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of certain UN13H4 woven plastic, coated and with liner flexible intermediate bulk containers (IBCs) for use as the outer packaging for lab pack applications in accordance with § 173.12(b)(2)(i).	1	2
SP12817	Non-Bulk Packaging Specifications/IBCs.	Authorizes the reuse of specification UN 1H1 non-removable head plastic drums for the transportation of certain Class 8 materials to Environmental Protection Agency (EPA) licensed treatment, storage or disposal facilities.	1	3
SP12997	Non-Bulk Packaging Specifications/IBCs.	Authorizes the transportation in commerce of a corrosive liquid, basic, inorganic, n.o.s. in a vented intermediate bulk container (IBC).	2	5

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP12998	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of lab packs containing materials that are not waste materials.	30	2
SP13027	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale, and use of multiple non-UN Standard containers conforming with all regulations applicable to a UN31A intermediate bulk container, except as provided. The containers are manifolded together within a frame and securely mounted on a truck chassis.	1	3
SP13052	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, mark, sale and use of UN11G intermediate bulk containers (IBCs) for transportation in commerce of waste paint and related materials.	1	2
SP13057	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of steel tubing which has an inner core containing certain hazardous materials. The steel tubing is exempted from the packaging, marking, labeling and placarding requirements of the HMR.	1	3
SP13083	Non-Bulk Packaging Specifications/IBCs.	Authorizes the transportation in commerce of a self-heating solid material in UN13H2 or UN13H3 intermediate bulk containers (IBCs).	1	3
SP13161	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of small quantities of certain hazardous materials in inner packages without cushioning or absorbent material around the inner packages, as not subject to the HMR when transported by highway and packaged in accordance with § 173.4 or transported by cargo aircraft and packaged in accordance with § 173.4a as specified.	1	3
SP13211	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain nitroglycerin solutions in alcohol in UN4GV certified combination packages.	1	2
SP13275	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of a Division 2.1 material in certain DOT specification 2Q non-refillable containers.	1	3
SP13282	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of a DOT specification UN1A1 steel drum or a UN1H1 plastic drum with a capacity of 55 U.S. gallons containing hypochlorite solutions, which exceed the quantity limitations when shipped by air.	1	3
SP13306	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain organic peroxide, type F, liquid in specially designed UN4G combination packages that contain inner packagings having closures that are not in the upright position.	1	3
SP13321	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain infectious substances in specially designed, reusable textile bags.	1	3
SP13481	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of not more than 25 grams of liquid explosive substances that have an energy density not greater than pure nitroglycerin, classed as Division 1.4E when packed in a special shipping container.	13	2
SP13552	Non-Bulk Packaging Specifications/IBCs.	Authorizes the transportation in commerce of phosphorus, white dry or phosphorus, white, under water or phosphorus white, in solution, or phosphorus, yellow dry or phosphorus, yellow, under water or phosphorus, yellow, in solution in alternate packaging.	11	2
SP13756	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of water-tight seamed steel tubing containing certain hazardous materials and exempts those steel-clad hazardous materials from the packaging, marking, labeling, and placarding requirements of the HMR.	1	3
SP14152	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain dry metal catalyst in UN4G combination packages or UN4D wooden boxes with stainless steel inner receptacles.	1	3
SP14155	Non-Bulk Packaging Specifications/IBCs.	Authorizes the one-way transportation in commerce of Division 1.4G fireworks in non-DOT specification fiberboard or plastic non-bulk outer packagings when transported by private motor carrier.	1	2
SP14189	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of the residue of certain paint and resin solutions for the purpose of cleaning in non-DOT specification bulk and non-bulk packagings.	1	3
SP14204	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of bromine in a 10 gallon UN 1N1 Monel drum that does not have a cap seal and is not overpacked in a UN 1A2 or UN 1H2 drum.	1	3
SP14223	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain soap products in non-DOT specification, non-refillable plastic containers.	2	3
SP14272	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale, and use of a non-DOT specification packaging described as a volumetric meter prover mounted on a trailer for transportation in commerce of liquefied petroleum gas residue vapors.	1	3
SP14286	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of 1,1,1,2-tetrafluoroethane or refrigerant gas R 134a in a non-refillable, non-DOT specification inside metal container similar to a DOT 2Q container.	2	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14314	Non-Bulk Packaging Specifications/IBCs.	Authorizes domestic transportation in commerce of certain Class 9 seat belt pretensioners as not subject to the HMR when transported by motor vehicle or rail freight.	3	4
SP14376	Non-Bulk Packaging Specifications/IBCs.	Authorizes one-way transportation in commerce by motor vehicle of waste lighters containing a Division 2.1 flammable gas, not meeting the definition of a lighter in § 171.8, for disposal only.	1	2
SP14418	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of water-reactive solids, powder in special packaging without being labeled or marked with the proper shipping name.	1	2
SP14427	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain non-DOT specification, non-refillable plastic aerosol containers filled with a Division 2.2 propellant gas and a non-hazardous material.	1	3
SP14441	Non-Bulk Packaging Specifications/IBCs.	Authorizes the one-way transportation in commerce of Division 1.4G fireworks in non-DOT specification fiberboard non-bulk outer packagings when transported by private motor carrier.	1	2
SP14475	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain packagings containing a consumer commodity, ORM–D, with closures that are not oriented in the upward direction.	1	2
SP14485	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification cylinders described as radiation detector chambers for transportation in commerce of certain Division 2.1 and 2.2 gases.	1	2
SP14488	Non-Bulk Packaging Specifications/IBCs.	Authorizes one-way transportation in commerce of an influenza vaccine in a custom stainless steel batch reactor at a constant pressure of 1–5 psig by use of a cylinder feeding air into the reactor.	1	3
SP14493	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of non-DOT specification containers (heat pipes) containing anhydrous ammonia for use in specialty cooling applications such as satellites and military aircraft.	4	2
SP14506	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of a methanol mixture as a small quantity under the provisions of § 173.4 when the amount of hazardous material in each inner receptacle exceeds 30 ml.	1	2
SP14513	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of lab packs of hazardous waste materials with different hazard classes in the same outer packaging.	1	2
SP14523	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain infectious substances in special packagings (freezers).	1	2
SP14524	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of a DOT specification 3AL cylinder containing 90% oxygen and 10% nitrogen as consumer commodity when the capacity does not exceed 5.2 ounces transported by motor vehicle.	1	2
SP14556	Non-Bulk Packaging Specifications/IBCs.	Authorizes the transportation in commerce of certain PG III solid hazardous materials in non-DOT specification bulk flexible packaging.	1	2
SP14603	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of a non-refillable, non-DOT specification inside metal container conforming with all regulations applicable to a DOT specification 2Q, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP14635	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of nitric acid, other than red fuming, with more than 70% nitric acid in alternative packaging when transported by motor vehicle.	1	3
SP14656	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification combination packaging for transportation in commerce of certain hazardous materials.	1	3
SP14659	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of calcium carbide in watertight, sift-proof, closed top, metal, non-DOT specification cargo tanks, portable tanks and bulk bins suitable for liquids.	6	2
SP14677	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of celluloid sheet in a non-DOT specification regular slotted box, style RSC/0201 as described in ASTM International Standard D5119.	2	2
SP14690	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale, and use of non-DOT specification high voltage accelerators for transportation in commerce of sulfur hexafluoride.	1	2
SP14694	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain unapproved equipment contaminated with explosives in non-DOT specification packaging.	1	2
SP14712	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale, and use UN11G fiberboard and UN13H4 woven plastic, coated and with liner flexible intermediate bulk containers (IBCs) for use as the outer packaging for certain Class 3 waste paints.	1	2

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP14741	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification high voltage accelerators for transportation in commerce of sulfur hexafluoride.	1	2
SP14754	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of approximately 72,000 1-gallon polyethylene bottles that are transported under the provisions of SP 6614 except they have not been marked with the name or symbol of the bottle producer.	1	3
SP14777	Non-Bulk Packaging Specifications/IBCs.	Authorizes one-way transportation in commerce of Class 9 hazardous waste in alternative packaging for approximately 8 miles by motor vehicle.	1	2
SP14838	Non-Bulk Packaging Specifications/IBCs.	Authorizes the transportation of Class 1 explosives in a specially designed outer packaging as Division 1.3C or 1.4C for materials and devices respectively without being first examined as required by § 173.56 for transportation by company owned motor vehicle or private carriage between plants.	1	2
SP14843	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of a manufactured article (rotating electrical connector) containing gallium in alternative packaging, and without shipping papers unless transported by air.	1	2
SP14849	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification fiberboard boxes for transportation in commerce of certain batteries without shipping papers, marking of the proper shipping name and identification number or labeling, when transported for recycling or disposal.	1	3
SP14867	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification hoop-wrapped fiber reinforced welded steel lined tubes with water capacities of up to 2525 gallons (9560L), enclosed and secured within an ISO freight container for transportation in commerce of certain Division 2.1 and 2.2 gases.	1	2
SP14871	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of lighters containing flammable gas in non-UN Standard specification packagings that are capable of meeting UN performance standards at the PG II performance level and are overpacked.	1	2
SP14912	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification containers conforming to all regulations applicable to a DOT specification 2Q container, except as specified, for transportation in commerce of certain hazardous materials.	1	3
SP14935	Non-Bulk Packaging Specifications/IBCs.	Authorizes one-time, one-way transportation in commerce of 250 gallon and 500 gallon capacity DOT specification 57 portable tanks or UN31A intermediate bulk containers with visible indications of damage or wears containing the residue of a Class 3 hazardous material for cleaning.	1	3
SP14940	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification cans conforming with all regulations applicable to a DOT specification 2P or 2Q inner metal receptacle except for wall thickness, for transportation in commerce of certain Division 2.1 and 2.2 aerosols.	1	3
SP14947	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of used dry batteries with voltages not exceeding 9 volts mixed with restricted amounts of lithium batteries and wet, non-spillable batteries for recycling without the effective insulation of exposed terminals when packaged in plastic drums in dedicated county vehicles.	2	2
SP14973	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of anhydrous ammonia in non-DOT specification packaging (heat pipes). The heat pipes are fabricated from aluminum alloy welded tubing and do not include valves or pressure relief.	1	3
SP14978	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of pyrophoric liquids in inner metal containers (bubblers) with openings greater than 25mm (1 inch) which are engineered to specific electronics applications that require a larger opening.	1	2
SP14992	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of Division 6.2 infectious substances and biological substance in alternative packagings (freezers) in a dedicated, specially designed transport vehicle.	1	3
SP14994	Non-Bulk Packaging Specifications/IBCs.	Authorizes use of certain 1-gallon plastic drums that are reused without meeting the minimum thickness requirement on corners and undercut areas for transportation in commerce of certain hazardous materials.	1	2
SP15038	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of hydrazine, anhydrous in unauthorized DOT specification packaging by motor vehicle.	1	3

TABLE 9—SPs NOT SUITABLE FOR PROPOSED ADOPTION—Continued

Permit No.	Category	Summary cylinders general	Holders	Code
SP15088	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of a DOT specification 4G combination packaging for transportation in commerce of certain materials toxic by inhalation, Hazard Zone A and B, by motor vehicle.	1	3
SP15136	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification fully-wrapped carbon fiber composite cylinder with a seamless aluminum liner that meets all requirements of ISO 11119 Part 2, except as specified, for transportation in commerce of certain Division 2.1 and 2.2 gases.	1	2
SP15141	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-refillable, non-DOT specification cylinder containing boron trifluoride, for transportation in commerce. The cylinders are described as electron tubes that are part of radiation detectors.	1	3
SP15146	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain refrigerant gases in non-DOT specification, non-refillable, inside metal containers conforming in part with DOT specification 2Q.	9	3
SP15156	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of non-DOT specification packaging described as a radiation detection survey meter containing a plastic ionization chamber for transportation in commerce of certain Division 2.2 materials.	1	3
SP15191	Non-Bulk Packaging Specifications/IBCs.	Authorizes use of UN1H1 drums as single package for certain toxic by inhalation materials transported by a private motor carrier.	1	3
SP15235	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, mark, sale and use of UN 11G fiberboard intermediate bulk containers (IBCs) for use as the outer packaging for certain Class 3 waste paints and waste paint related material.	1	2
SP15260	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use, in underwater applications, of non-DOT specification composite cylinders, conforming to all requirements of the DOT–CFFC (fully wrapped carbon-fiber reinforced aluminum liner) cylinder, for transportation in commerce of certain hazardous materials.	1	3
SP15283	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of Class 3, PG II polyester resin in UN31A intermediate bulk containers and Division 5.2, organic peroxide, type D, catalyst in a UN3H1/Y jerrican or drum. The packagings are used as part of a concrete mixing/application system.	1	2
SP15335	Non-Bulk Packaging Specifications/IBCs.	Authorizes the manufacture, mark, sale and use of a non-DOT specification box conforming with all regulations applicable to a DOT specification UN 4G fiberboard box, for the transportation in commerce of nitric acid other than red fuming, with at least 65%, but no more than 70% nitric acid.	1	3
SP15441	Non-Bulk Packaging Specifications/IBCs.	Authorizes bulk transportation in commerce of certain desensitized explosives classed as Class 3, by motor vehicle.	1	2
SP15519	Non-Bulk Packaging Specifications/IBCs.	Authorizes relief from the requirement to replace the rigid plastic inner receptacle in intermediate bulk containers (IBCs) used to transport UN2031 with more than 55% nitric acid every 2 years.	1	3
SP15540	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of certain non-DOT specification bulk packages containing Class 3 material by cargo aircraft where no other means of transportation is practicable.	1	3
SP15568	Non-Bulk Packaging Specifications/IBCs.	Authorizes one-way transportation in commerce of certain desensitized explosive solids (UN3380) in sift-proof closed bulk bins for a distance of not more than fifteen miles.	1	2
SP15615	Non-Bulk Packaging Specifications/IBCs.	Authorizes transportation in commerce of UN0336 fireworks in UN4G packaging with a capacity greater than 450 liters.	3	2
SP15617	Non-Bulk Packaging Specifications/IBCs.	Authorizes one-way, one-time transportation in commerce of alternate packaging for waste phosgene in glass breakseal bulbs. The segregation requirements are waive for the transportation of this Division 2.3 material to a disposal facility.	1	2
SP15623	Non-Bulk Packaging Specifications/IBCs.	Authorizes manufacture, marking, sale and use of multiple non-DOT specification containers, manifolded together within a frame and securely mounted on a truck chassis, for transportation in commerce of certain hazardous materials.	1	3

F. Request for Comments

PHMSA welcomes comments concerning the proposed amendments in this rulemaking. Specifically, PHMSA is interested in comments from SP holders (both those deemed suitable and those deemed not suitable for adoption) reviewed for this rulemaking. Due to the large scope of this rulemaking, PHMSA asks that when submitting comments to the Docket for this rulemaking, commenters include the SP Number and Topic area in the comment title and document name (*e.g.* SP12345/Cylinder—General).

For holders of SPs deemed suitable for adoption, PHMSA requests comment

on our determination. PHMSA is particularly interested in comments that confirm or refute the suitability, safety, and general applicability of the SPs. PHMSA is also soliciting comments on the regulatory text proposed in this rulemaking. Specifically, PHMSA is interested in comments that address whether the proposed regulatory text accurately encompasses the requirements of the SP.

For holders of SPs deemed not suitable for adoption, PHMSA requests comment on our determination. PHMSA is particularly interested in comments that confirm or refute the suitability, safety, and general applicability of the SPs. Please note that if you are a holder of a SP that was not proposed to be adopted but believe it should be, PHMSA asks that you submit material to support such an argument. Specifically, PHMSA requests:

- Information and arguments that support the proposed adoption including technical and scientific data;
- The impact of the proposed adoption including cost and benefits;
- The frequency of shipments made under the SP;
- The frequency of hazardous materials incidents (such as those described in 171.15 and 171.16) occurring during shipments made under the SP; and
- Proposed regulatory text.

PHMSA asks that when submitting comments to the docket for this rulemaking for SPs deemed not suitable, the SP Number, Topic area and the letters ''NS'' indicating ''Not suitable'' are reflected in the comment title and document name (*e.g.* SP12345/Cylinder—Retest/NS).

Finally, PHMSA requests comment as it considers a future proposed requirement for a SP applicant to provide potential regulatory text as part of each SP application. Specifically, PHMSA requests comment on the impact this practice would have, such as benefits or drawbacks.

IV. Section-by-Section Review by Topic Area

A. Cylinders—General

Part 172

172.102 Special Provisions

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. Non-bulk packagings must be marked with the United Nations (UN) identification number and proper shipping name, and bear labels communicating the hazard of the material contained in the package. DOT–SP 13544 authorizes the transportation in commerce of Department of Transportation (DOT) Specification 4BA240 cylinders containing liquefied petroleum gas (LPG) and propane and/or residue of LPG or propane without hazard warnings provided the materials are transported in a closed and placarded transport vehicle. This SP supports the propane cylinder exchange programs that accept expended cylinders in exchange for full cylinders. Cylinders collected during the course of these programs may not always bear the appropriate hazard warning markings and labels as required by the HMR. DOT–SP 13544 imposes certain operational controls to ensure appropriate hazard communication, driver training, and appropriate securement of the cylinder on the transport vehicle. PHMSA proposes to add a special provision, ''N95'' to allow non-bulk packagings containing UN1075, Liquefied petroleum gas and UN1978, Propane not to be marked with the UN number and proper shipping name or bear hazard labels provided certain restrictions are met.

Section 172.400a

The HMR provide exceptions or alternatives to the labeling requirements under specific circumstances. One such alternative permits the use of a neckring marking, under certain conditions, in accordance with the CGA publication *C–7, Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A, 8th Edition* (2004). Section 172.400a permits the use a CGA Pamphlet C–7 marking in lieu of the 100 mm x 100 mm square-on-point labels on a Dewar flask meeting the requirements in § 173.320 and cylinders containing Division 2.1, 2.2, and 2.3 materials that are not overpacked.

DOT–SP 14251 authorizes the transportation in commerce of overpacked cylinders, containing Class 2 materials, with CGA C–7 neckring labels provided the overpack is labeled in accordance with § 172.400. Additionally, the CGA petitioned PHMSA (P–1521) to allow cylinders to display the neckring marking even when overpacked. The petition would still require the overpack to display the 100 mm x 100 mm square-on-point labels in accordance with 49 CFR part 172, subpart E. The marking prescribed in Appendix A to CGA publication C–7, *Guide to Preparation of Precautionary Labeling and Marking of Compressed Gas Containers, Appendix A, 8th Edition (2004)* provides useful information in a clear and consistent manner and its widespread use on cylinders over the course of several years has enhanced its recognition. The adoption of DOT–SP 14251 and CGA's proposed change would provide greater flexibility for shipments of overpacked cylinders while ensuring adequate hazard communication. Therefore, PHMSA is proposing to revise this section to authorize the transportation in commerce of overpacked cylinders, containing Class 2 materials, with CGA C–7 neckring labels and to allow these cylinders to display the neckring marking even when overpacked provided the overpacks are properly labeled.

Part 173

Section 173.181

Section 173.181 specifies the authorized packagings for the shipment of pyrophoric materials (liquids) in transportation. DOT–SP 14419 authorizes the additional use of DOT specification 3AL cylinders constructed from aluminum alloy 6061–T6 for the shipment of pyrophoric liquids provided the cylinders are constructed of 6061–T6 aluminum, have a minimum marked service pressure of 1800 psig, have a maximum water capacity of 49 liters, and any preheating or heating of the cylinders is limited to a maximum temperature of 175 °F. PHMSA proposes to revise this section to allow for the use of DOT specification 3AL cylinders constructed from aluminum alloy 6061–T6, with the same specified limitations for the shipment of pyrophoric materials.

Section 173.193

Section 173.193(b) states that ''Bromoacetone, methyl bromide, chloropicrin and methyl bromide mixtures, chloropicrin and methyl chloride mixtures, and chloropicrin mixtures charged with non-flammable, non-liquefied compressed gas must be packed in Specification 3A, 3AA, 3B, 3C, 3E, 4A, 4B, 4BA, 4BW, or 4C cylinders having not over 113 kg (250 pounds) water capacity (nominal).'' DOT–SP 12301 authorizes the transportation in commerce of Chloropicrin and methyl bromide mixtures in DOT4BW cylinders with water capacity (nominal) not over 454 kg (1,000 pounds). PHMSA proposes to revise § 173.193(b) to allow for a water capacity of not over 454 kg (1,000 pounds) for chloropicrin and methyl

bromide mixtures packed in DOT specification 4BW cylinders.

Section 173.301

This section outlines the general requirements for the use of cylinders including a list of authorized cylinders, general filling requirements, valve protection, and pressure relief device requirements. In this NPRM, PHMSA proposes revisions that would amend the pressure relief device requirements and permit the use of valve caps made from a material other than metal.

PHMSA proposes to authorize the transportation in commerce of DOT specification 39 cylinders without a pressure relief device valve being in communication with the vapor space. With limited exceptions, § 173.301(f) requires a cylinder filled with a compressed gas to be fitted with a pressure relief device. Section 173.301(f)(2) states that ''a pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas) material.'' DOT–SP 13318 authorizes the transportation in commerce of DOT specification 39 cylinders of 75 cubic inches or less volume, without the PRD in direct communication with the vapor space. PHMSA proposes to amend paragraph (f)(2) to state that this provision does not apply to cylinders of 75 cubic inches or less in volume filled with a liquefied petroleum gas, methyl acetylene and propadiene mixtures, stabilized, propylene, propane or butane. This SP was originally issued in 2003 subsequent to the publication of HM–220D [67 FR 51625; August 8, 2002] which instituted the requirement that the PRD be in communication with the vapor space, and continues to allow a shipping practice that prior to 2003 has been successfully used with an acceptable safety record.

PHMSA proposes to create an additional exception to pressure relief device requirements for DOT–3E cylinders under certain limited circumstances. DOT–SP 8074 provides an exception from the pressure relief device requirements for a DOT specification 3E cylinder up to 12 inches long and 2 inches in diameter when filled with the following gases up to the specified limits: Carbon dioxide, liquefied 0.24L (8 oz.), Ethane 0.12L (4oz.), Ethylene (4 oz.), Hydrogen chloride, anhydrous 0.24L (8 oz.), Nitrous oxide 0.24L (8 oz.), Vinyl fluoride, stabilized 0.24L (8 oz.) and Monochlorotrifluoromethane 0.35L (12 oz.). PHMSA proposes to add a new paragraph § 173.301(f)(7) to authorize DOT 3E cylinders of this size and containing these gasses to be shipped without a pressure relief device provided they are under the provided maximum weight limits.

Finally, PHMSA also proposes to authorize the use of valve protection caps that are made from a material other than metal. Compressed gas cylinders must meet certain valve protection requirements outlined in §§ 173.40(d) and 173.301(h). Each cylinder with a valve must have a protective metal cap, other valve protection device, or an overpack which is sufficient to protect the valve from damage during transportation. For Division 2.3 or 6.1 Hazard Zone A or B materials, the valve protection must be of sufficient strength to protect the valve from breakage and leakage resulting from a drop of 2.0 m (7 ft) or more onto a non-yielding surface at the orientation most likely to cause damage. DOT–SP 12782 authorizes plastic valve protection caps for certain Division 2.1, 2.2, and 2.3 materials when the valve protection is sufficient to prevent leakage when the cylinder, with the valve installed, is dropped from 2.0 m (7 ft) or more onto a non-yielding floor, impacting the valve assembly or cap at the orientation most likely to cause damage. In this NPRM, PHMSA proposes to amend §§ 173.40(d) and 173.301(h) to allow for the valve protection, including the valve cap, to be made from plastic. PHMSA is not proposing any changes to § 173.301b(c) because ISO 11117 permits valve caps made of materials other than metal.

Section 173.302a

Sections 173.302, 173.302a, 173.304 and 173.304a prescribe additional requirements for the transport of non-liquefied (permanent) and liquefied compressed gases in DOT specification cylinders. These requirements include authorized cylinders and filling limits. Section 173.302a(b) states that a DOT 3A, 3AX, 3AA, 3AAX, and 3T cylinder may be filled with a compressed gas, other than a liquefied, dissolved, Division 2.1, or Division 2.3 gas, to a pressure 10% in excess of its marked service pressure, subject to certain safety criteria. DOT–SP 6530 authorizes the transport in commerce of hydrogen and mixtures of hydrogen with helium, argon, or nitrogen, in certain cylinders filled to 110% of their marked service pressure. PHMSA proposes to add a new paragraph (c) to include this exception and to remark the other paragraphs in this section to reflect this addition. This SP was originally issued over 40 years ago.

Section 173.304a

In § 173.304a(a)(2), a table provides the maximum filling densities and permissible cylinder types for certain named gases. Currently, § 173.304a(a)(2) permits a maximum filling density of 68% for carbon dioxide and nitrous oxide in DOT 3, DOT 3HT2000 and DOT 39 cylinders as well as DOT 3A, 3AX, 3AA, 3AAX, 3E, 3T, and 3AL cylinders with a marked service pressure of 1800 psi. PHMSA proposes to modify the entries currently in the table in § 173.304a(a)(2) to add additional filling densities for carbon dioxide and nitrous oxide.

DOT–SP 13599 authorizes additional maximum filling densities for carbon dioxide and nitrous oxide to include 70.3%, 73.2%, and 74.5% in DOT 3A, 3AA, 3AX, 3AAX, 3AL, and 3T cylinders with marked service pressures of 2000, 2265, and 2400, psig respectively, subject to operational controls. Air Products and Chemicals Inc. (Air Products) submitted a petition for rulemaking (P–1560) requesting PHMSA revise § 173.304a(a)(2) to adopt the provisions of DOT–SP 13599. Air Products stated in its petition that the proposed increase in the maximum permitted filling densities would yield various benefits including increased harmonization of compressed gas filling requirements with the UN Model Regulations, benefits to the carbonated beverage industry, decreased fuel costs associated with the transportation and delivery of carbon dioxide and nitrous oxide, and reduced administrative costs through the elimination of DOT–SP 13599. PHMSA has a high degree of confidence that the increased filling densities for these gases will not adversely impact safety. While determining if DOT–SP 13599 was suitable for inclusion in this rulemaking, PHMSA's technical evaluators confirmed that if the table in § 173.304a is revised to clearly link the maximum permitted filling density with the specific gas and the specific packaging, then the operational controls of DOT–SP 13599 would be met. Therefore, PHMSA proposes to modify the entries currently in the table in § 173.304a(a)(2) for carbon dioxide and nitrous oxide to include the maximum filling densities listed in P–1560 and DOT–SP 13599.

Part 180, Subpart C

Qualification, Maintenance and Use of Cylinders

The HMR prescribe requirements for the continuing qualification, maintenance, and periodic requalification of DOT specification

cylinders, DOT SP cylinders, and UN pressure receptacles. These requirements ensure that cylinders continue to conform to the appropriate specification and compromised cylinders are not filled with hazardous materials. The discussion of the proposed amendments includes a section-by-section review of the current requirements, and a discussion of SPs considered for adoption and proposed amendments.

Part 180

Section 180.209

Each DOT specification cylinder must be given a complete external and internal visual inspection and subjected to a hydrostatic pressure test. This combination of a visual examination and hydrostatic test is referred to as requalification. The time period for periodic requalification is typically 5 years, but this period varies depending on the cylinder specification and the gas service. The requalification period for various DOT specification cylinders is shown in the § 180.209 table.

Paragraph (e) authorizes a proof pressure test in lieu of the volumetric expansion test for 4B, 4BA, 4BW, or 4E cylinders protected with a corrosion resistant coating used exclusively for the gases specified in that paragraph. DOT–SP 12084 expands on the list in paragraph (e) to include additional gases. These gases are refrigerated gases and liquefied gases similar to those already permitted by § 180.209(e). This SP was originally granted in 1998 and has been revised several times to expand the list of gases authorized by the SP. Since 1998, thousands of cylinders have been requalified in the manner described by this SP without safety incident. In this NPRM, PHMSA proposes to adopt the provisions in DOT–SP 12084 by removing the list of authorized gases and authorizing the use of the proof pressure test for DOT–4B, 4BA, 4BW, or 4E cylinders protected externally by a suitable corrosion resistant coating and used exclusively for non-corrosive gases. The authorized specifications limit the total pressure in the cylinder to 500 psi or less. It should be noted that because this SP does not include a 4E cylinder, PHMSA specifically requests comments on the feasibility of its inclusion.

Section 180.213

Cylinders requalified in accordance with the HMR must bear requalification markings in accordance with § 180.213. As provided in § 180.213(c), ''The depth of requalification markings may not be greater than specified in the applicable specification. The markings must be made by stamping, engraving, scribing or other method that produces a legible, durable mark.'' DOT–SP 14937 allows the use of a label embedded in epoxy in lieu of other methods described in § 180.213. PHMSA proposes to amend paragraph (c) to allow the use of a label embedded in epoxy in lieu of stamping provided the marking is legible and durable. This SP was originally issued in 2008 and has an acceptable safety record.

B. Cylinders—NDT/Aerosols

Part 173

Section 173.304

Section 173.304 specifies the requirements for the filling of cylinders with liquefied compressed gases. Paragraph (d) of this section provides for authorized packagings for the filling of cylinders with refrigerant and dispersant gases. The current regulations authorize these materials in a 2Q non-refillable container. DOT–SP 12573 authorizes a refrigerant gas (''R 134a,'' UN3159) in a non-DOT specification container similar to a 2Q container at a maximum allowable pressure requirement for the contents of 198 psig at 54.4 °C (130 °F).

Based on our review of the permit and no discovery of compliance violations or incidents associated with the transport history of the permit, we are proposing to adopt the container found in DOT–SP 12573 as an authorized container. However, we are differing marginally from the permit in that we are adopting a maximum pressure threshold of 200 psig at 55 °C (131 °F) for the contents. There is no safety basis for the 200 psig ceiling other than we believe it is a cleaner cutoff point than the 198 psig maximum found in the SP. In addition, as part of the variation on the design of a DOT 2Q container, the modified container will be marked as ''DOT 2Q1.''

Finally, the current regulations require that the pressure of the contents of the metal containers not exceed 87 psig at 21 °C (70 °F). We invite comment on whether the requirement for a maximum pressure should be specified at 21 °C (70 °F) for the 2Q1 container in addition to the limit at 55 °C (131 °F). If so, we invite comment on what should the limit be for typical refrigerant or dispersant gas such as 1,1,1,2 Tetrafluoroethane, R134a. See the associated discussions for §§ 173.306 and 178.33d.

Section 173.306

Section 173.306 provides general requirements and exceptions for shipments of limited quantities of compressed gas. In this NPRM, we are making several proposed changes to this section. The proposed changes are discussed as follows:

Conforming revisions. Throughout this section of the HMR and within related SPs that provide exemptions from these regulations for gases, pressure standards are indicated at either 130 °F or 131 °F. In the interest of consistency and conformity with the general requirements for compressed gases in §§ 173.301 and 173.301a, we are proposing to change all references of 54.4 °C (130 °F) to 55 °C (131 °F). We invite comment on whether there are any potential negatives in making this conforming change. We are also making revisions to the construction and formatting of how this section is presented (*e.g.,* insertion of an ''if, then'' table) in an effort to make the requirements more reader-friendly.

Authorized Metal Containers

DOT 2P inner nonrefillable metal containers. Under § 173.306, limited quantities of foodstuffs or soaps with soluble or emulsified compressed gas are authorized in nonrefillable metal or plastic containers. Paragraph (b)(1) introductory text authorizes these containers subject to a pressure requirement not to exceed 140 psig at 54.4 °C (130 °F). SPs 13601 and 14503 authorize the transportation of ''UN1950, Aerosols, non-flammable (each not exceeding 1 L capacity), 2.2,'' and 7951 authorizes the transportation of ''UN1956, Compressed gas, n.o.s., 2.2,'' in containers that conform to DOT 2P or 2Q specifications except for some minimal modifications. The containers must have maximum pressures for the contents of 160 psig at 54.4 °C (130 °F) and 150 psig at 23.9 °C (75 °F), respectively. DOT–SP 7951 states that the containers must be transported in the refrigerated state. PHMSA is seeking comments on whether refrigeration should be a condition of the transport of these materials. As part of the variation on the specification of these containers, the modified container will be marked as ''DOT 2P1'' under the provisions of new § 178.33c discussed separately in this rulemaking.

We are also proposing to include DOT 2P1 as an authorized metal aerosol container under § 173.306(a)(3)(iii). We see no reason to limit this container to foodstuffs or soaps under paragraph (b)(1) because the pressure limit for the contents is the same as the current requirement for a DOT 2P container, and the safety factor of the minimum burst pressure under the SP is greater than that for a DOT 2P container (270

psig vs. 240 psig). We are not proposing to adopt the burst pressure requirement because the SP requirements are such that the pressure relief system of these containers must function at a pressure below the burst pressure. Also, the DOT 2P1 would be authorized for both Division 2.1 and 2.2 aerosols under § 173.306(a)(3)(iii).

DOT 2Q inner nonrefillable metal containers. Limited quantities of compressed gas are authorized in metal aerosol containers (see § 171.8 of the HMR). Paragraph (a)(3) introductory text of this section authorizes metal aerosol containers under certain conditions including packaging types and pressure thresholds. The current regulations under § 173.306(a)(3)(iii) require use of a DOT 2Q container for pressures exceeding 160 psig at 54.4 °C (130 °F) but not to exceed 180 psig. DOT–SP 12573 authorizes the transport of ''Aerosols, non-flammable,'' UN1950 in non-DOT specification containers that conform to DOT 2Q specifications except for some modifications. The containers must have maximum pressures for the contents of 198 psig at 54.4 °C (130 °F).

Based on review of the permit and no discovery of compliance violations or incidents associated with the transport history of the permit, we are proposing to adopt the modified DOT 2Q as an authorized metal aerosol container. However, we are differing marginally from the permit in that we are adopting a maximum pressure threshold of 200 psig at 55 °C (131 °F). There is no safety basis for the 200 psig ceiling other than we believe it is a cleaner cutoff point than the 198 psig maximum found in the permit. As part of the variation of the specification of a DOT 2Q container, the modified container will be marked as ''DOT 2Q1.''

This proposed rule would also expand authorized materials to include Division 2.1 aerosols. We see no reason to limit the use of this container to non-flammable aerosols based on the record of use for this container and that DOT 2Q containers currently authorized in the HMR are allowed to be used for all defined aerosol types, however, we invite comment on the suitability of the container for all aerosol types. See the associated discussions for §§ 173.304 and 178.33d.

DOT–SP 13581 is linked to the above proposed provision in that it authorizes the use of metal aerosol containers manufactured, tested, and marked according to DOT–SP 12573. We believe with the adoption of the modified DOT 2Q container (*i.e.,* a DOT 2Q1 container), this SP will no longer be needed.

Alternatives to Testing of Metal Aerosol Containers by a Hot Water Bath Test

As a condition of the use of a metal aerosol container, each container, after being filled, must be subjected to a hot water bath to raise the internal pressure to such a degree that leakage or permanent deformation, if any, can be determined (see § 173.306(a)(3)(v)). The provision also provides for a testing protocol for a container where the contents may be sensitive to heat. Currently, this is the only method authorized for determining leakage or permanent deformation and thus, fillers that have developed other protocols or that do not want to subject their products to a hot water bath test must obtain a SP. A number of SPs that authorize the use of alternative methods to determine leakage or permanent deformation are discussed as follows:

(1) Alternate hot water bath test. DOT–SP 12995 authorizes a methodology that is a combination of a hot water bath test, a weight test, and visual inspection. Rather than subjecting each filled container to a hot water bath test, only one container out of each lot is subjected to the hot water bath test, a second is subjected to a weight test, the results of which must be compared to weight specification for the container as outlined in quality control procedures, and finally, the remainder of the lot must be visually inspected by examining the valve, crimp, and seam areas for evidence of leakage.

Based on review of the permit and no discovery of compliance violations or incidents associated with the transport history of the permit, we are proposing to adopt DOT–SP 12995. The permit authorizes only DOT 2Q containers but we are applying it to all authorized metal aerosol containers. While determining if DOT–SP 12995 was suitable for inclusion in this rulemaking, PHMSA's technical evaluators confirmed that the methodology that includes a combination of hot water bath test, weight test, and visual inspection may be performed on a DOT 2P as well as a DOT 2Q. Since these containers are similar designs except in terms of strength, this alternative to the hot water bath test is applicable to any metal container. Previously, most applicants of DOT–SP 12995 only requested 2Q because that is what they needed for their particular hazmat, but that does not mean that alternative testing is not good for similar containers. Additionally, the permit applies to specific filling conditions but we will apply this testing method to containers complying with the current filling conditions in § 173.306(a)(3). Finally, we vary from the permit with our proposed language in that we require maintenance and access to operating procedures especially with regard to the weight test and specification in order to effect a broader application of this alternative. Rather than specify standards, we will allow persons to develop their own procedures that best fit their product on the condition that DOT has access to these procedures. We invite comment on this approach and others. In our proposal, for purposes of this alternative, we designate a lot as 2,000 containers consistent with the SP. We invite comment on whether we should specify a lot size, allow persons to determine the lot size, and if so, how the testing procedures should be modified to accommodate larger lot sizes.

(2) Automated in-line pressure test. DOT–SPs 14429, 14623, 14625, 14627, 14723, 14724, 14786, 14842, 14887, 14953, 15135, 15265, 15427, and 15972 all authorize the use of an automated process to check the pressure of filled containers (*i.e.,* an ''automated in-line pressure check'') instead of subjecting the containers to a hot water bath. Based on review of the SPs and no discovery of compliance violations or incidents associated with the transport history of the permit, we are proposing to adopt the provisions of these SPs, specifically authorizing the use of an automated process for pressure checks that does not involve a hot water bath. The safety control measures for the ''automated in-line pressure check'' vary greatly among the SPs with regard to the criteria for rejection, limits on the filling of contents, inspection, and corrective action. We are seeking comments on whether the proposed +/−0.5% accuracy of the pressure measuring instrument is appropriate for widely-used automated equipment for aerosols. Rather than attempt to develop a standard that might not address all possible variations on an automated process, we have opted to propose a performance-based requirement that adopts parts of all of the SPs. Specifically, we propose to require the development of operating procedures (which we believe most entities should already have as part of their processes), we provide for basic components that the procedures must address (*e.g.,* inclusion of rejection criteria), and we require written record of the operating procedures be made accessible to DOT representatives. We invite comment on the merits of this approach.

(3) Weight test. DOT–SP 14440 authorizes the use of a process to check the weight of filled containers (*i.e.,* an

''automated in-line pressure check'') instead of subjecting the containers to a hot water bath. Based on review of the permit and no discovery of compliance violations or incidents associated with the transport history of the permit, we are proposing to adopt the scope of this SP, specifically authorizing the use of weight checks as a means to determine compliance with pressure requirements. Comparison of the weight of a container against the pre-determined target weight for the container provides an indication of the filling of the container. For example, a container with a weight greater than that of the target weight provides an indication of overfilling and thus, would likely exceed the authorized pressure limit at 55 °C (131 °F). We have opted to propose a performance-based requirement that adopts parts of all of the SPs. Specifically, we propose to require the development of operating procedures (which we believe most entities should already have as part of their processes), we provide for basic components that the procedures must address (*e.g.,* a supplementary heat test for rejection of a lot), and we require written record of the operating procedures accessible to DOT representatives. We invite comment on the merits of this approach.

(4) Leakage test. DOT–SP 14544 authorizes the use of a high pressure air test on empty containers combined with a leakage test for filled containers instead of subjecting the containers to a hot water bath. The testing protocol for filled containers found in this SP is currently applied to plastic containers under paragraph (a)(5) of this section in the HMR, however, the pressure and leakage test of the empty containers differs in its application. Under DOT–SP 14544, each empty container must be pressure tested at 120 psig instead of the HMR requirement that each empty container must be subjected to a pressure equal to or in excess of the maximum expected in the filled containers at 55 °C (131 °F), and that is at least two-thirds of the design pressure of the container. Under both tests, if there is evidence of leakage, the container must be rejected. Based on review of the permit, no discovery of compliance violations or incidents associated with the transport history of the permit, and a similar requirement currently under the HMR, we are proposing to adopt the scope of this SP, specifically authorizing the use of a leakage test as a means to determine compliance with pressure requirements. Our implementation will differ from the SP in that we are proposing to adopt the leakage testing requirements under § 173.306(a)(5)(v), but including the DOT–SP 14544 testing protocol for empty containers as an alternative. We invite comment on our approach to adopt this SP.

Accumulators. The HMR provides for special considerations for limited amounts of compressed gas in accumulators. DOT–SP 8786 authorizes the transport of accumulators under an alternative testing procedure from what is outlined in paragraph (f)(2) and (f)(3) of this section. Instead of testing each accumulator to three times (3x) the charge pressure, the SP provides for conditions to test one accumulator out of each lot of 1,000 to the burst design pressure, and two accumulators to two and a half times (2.5x) the charge pressure. Based on review of the permit, no discovery of compliance violations or incidents associated with the transport history of the permit, and the lengthy history of use of this SP, we are proposing to adopt DOT–SP 8786 except for the specific conditions for the preparation for testing of the accumulators.

Aerosol disposal. The general packaging requirements of the HMR forbid the transport of leaking or improperly-filled packages. This includes aerosol containers that are found to be leaking or improperly filled as part of a combination packaging. Although the HMR provides for conditions to allow for the transport of damaged, defective, or leaking packages under salvage packaging provisions in § 173.3(c) and (d) for salvage drums and salvage cylinders, respectively, these provisions do not apply to aerosol containers that are leaking or improperly filled. Thus, shippers (fillers) with defective aerosol containers (''waste aerosols'') are limited to onsite disposal of aerosol containers that do not comply with the HMR. DOT–SP 11296 provides for an option to transport these containers to an offsite facility for disposal under certain conditions (*e.g.,* overpacking in DOT specification packagings, modal restrictions, etc.).

Based on review of the permit, no discovery of compliance violations or incidents associated with the transport history of the permit, and that adoption would allow for the transport of these aerosols for proper disposal, we are proposing to adopt the general scope of DOT–SP 11296 but with some differences. The proposed language is not limited to flammable aerosols such as indicated in the language in DOT–SP 11296. Also, the proposed regulatory language is modeled after the salvage packaging requirements of § 173.3(c) in that: (1) The authorized outer packaging for overpacking the defective cylinders has been expanded to include other metal drums (*i.e.,* 1B2 and 1N2); (2) a condition for cushioning and absorbent material, when necessary, has been added; and (3) an ''aerosol salvage'' drum marking has been adopted. We invite comment on several aspects of these proposed provisions including authorized aerosols, (*e.g.,* are there concerns with allowing aerosols other than flammable aerosols only in the drums?), authorized outer packaging, hazard communication, and authorized transport modes.

Part 178

Section 178.33c

Under the HMR, certain DOT specification containers with restricted capacity and commonly referred to as ''aerosol containers'' are authorized for transport of compressed gases and for liquefied compressed gases under limited situations. These containers include DOT 2P (inner non-refillable metal) containers. The specification standards are outlined in § 178.33 of the HMR, but the specification does not provide for variations on the standards. Thus, technological advances or design changes to satisfy customer needs are such that the resulting metal containers would not comply with the standards for a DOT 2P container, nor any other container authorized under either §§ 173.304 or 173.306 of the HMR. DOT–SPs 13601 and 14503 (also 7951) provide for a variation on the DOT 2P container specifications by authorizing construction of the container according to modifications to the standards for manufacture and testing.

These variations on a 2P container are equipped with some manner of pressure relief system (*e.g.,* a rim-vent release device or a dome expansion device) that must function within a certain pressure range, otherwise the container is rejected. In effect, these containers are designed to buckle to relieve pressure before bursting. For example, for a container built to DOT–SP 13601, the pressure relief system must function between 175 psig and 210 psig or be rejected. However, we have no specific information in the special permit(s) on the relationship between the functional range and the tested burst pressure. The current requirements for a container for foodstuffs under § 173.306(b)(1) is that the pressure of the contents cannot exceed 140 psig at 130 °F and the container must be capable of withstanding a pressure of 1.5x the contents at 130 °F without bursting. Thus, 140 psig of contents equates to a minimum burst pressure of 210 psig.

Additionally, the current minimum burst pressure for a DOT 2P container is 240 psig (§ 178.33–8). Using the DOT–SP 13601 requirements, the minimum burst pressure requirement is listed as 270 psig (assumed at 130 °F) and the pressure of contents at 130 °F may not exceed 160 psig thus, equating to approximately 1.7x the contents at 130 °F without bursting (which is more stringent than for a 2P under the HMR). However, accounting for the pressure range for operation of the relief system at 175 psig to 210 psig, the multiplier based on the maximum pressure of the contents is approximately 1.1x to 1.3x the contents. That is, the relief system must function within 1.1x to 1.3x the pressure of the contents at 130 °F.

This is further complicated under DOT–SP 14503 (and 7951) where the standard for the pressure of the contents is set at 75 °F for which we do not have an equivalent requirement under the HMR. Additionally, the ranges for functioning of the relief systems have a higher upper bound, 175 to 250 and 175 to 235, respectively. And, finally there is no minimum burst pressure specified in DOT–SP 14503 (and 7951); therefore, we must default to the DOT 2P minimum burst pressure of 240 psig. Again, the circumstances are unclear in that the upper bounds for the functional ranges approach or exceed the 2P minimum burst pressure yet we do not have information on the actual tested burst pressure which could be much larger. Therefore, based on the requirements of DOT–SP 13601, we propose to implement a requirement that for containers with pressure relief systems, the upper bound of the functional range for a pressure relief system must be no greater than 80% of the minimum burst pressure or the recorded test pressure. We invite comment on using this approach and whether it would be preferable to implement a requirement for the upper bound of the range based on the pressure of the contents?

Overall, based on review of the permit and no discovery of safety issues or incidents associated with the transport history of the permit, we are proposing to incorporate the standards for the modified DOT 2P container found in DOT–SP 13601 (and likely 14503 (7951)) as a variation on the DOT 2P container design. This variation would be required to be marked as a ''DOT 2P1.'' Rather than repeat in total the DOT 2P specification standards that have remained the same for a DOT 2P1 container, we propose to instruct the reader that all standards for a DOT 2P1 remain the same as those for a DOT 2P except for the variations outlined in a proposed new § 178.33c–2.

Section 178.33d

Under the HMR, certain DOT specification containers with restricted capacity and commonly referred to as ''aerosol containers'' are authorized for transport of compressed gases and for liquefied compressed gases under limited situations. These containers include DOT 2Q (inner nonrefillable metal) containers. The specification standards are outlined in § 178.33a of the HMR but the specification does not provide for variations on the standards. Thus, technological advances or design changes to satisfy customer needs are such that the resulting metal containers would not comply with the standards for a DOT 2Q container, nor any other container authorized under either §§ 173.304 or 173.306 of the HMR. DOT–SP 12573 provides for a variation on the DOT 2Q container specifications by authorizing construction of the container according to modifications to the standards for type and size, manufacture, wall thickness, and testing. DOT–SP 14503 also provides for a variation on the DOT 2Q container specification by authorizing construction of the container according to modifications to its manufacture and testing.

These variations on a 2P container are equipped with some manner of pressure relief system (*e.g.,* a rim-vent release device or a dome expansion device) that must function by a certain threshold level or within a certain pressure range, otherwise the container is rejected. In effect, these containers are designed to buckle to relieve pressure before bursting. For example, for a container built to DOT–SP 12573, the minimum pressure before the system buckles is 220 psig (and if not equipped with a pressure relief system, the container may not burst below 320 psig). The maximum pressure of the contents authorized under this SP is 198 psig at 130 °F (we proposed at maximum level of 200 psig based on this SP in the § 173.306 discussion for 2Q containers). The current requirements for a 2Q container under § 173.306(a)(3)(ii) is that the pressure of the contents cannot exceed 180 psig at 130 °F and the container must be capable of withstanding a pressure of 1.5x the contents at 130 °F without bursting. Applying the same multiplier to 200 psig, the container must withstand 300 psig without bursting. The DOT–SP 12573 minimum burst pressure of 320 psig is more stringent; however, the calculated burst pressure of 300 psig based on the proposed maximum pressure of contents is also greater than the current required minimum burst pressure of 270 psig for a 2Q container. Thus, it provides a greater margin of safety than current required but also provides some opportunity for relief as a standard. We propose to adopt a 300 psig minimum burst pressure for this modified 2Q container. Also, we propose to require buckling of the system at 75% of tested burst pressure (with a minimum burst test pressure of 300 psig). We invite comment on these approaches for adoption of the provisions for the modified 2Q container under DOT–SP 12573. Based on review of the permit and no discovery of incidents associated with the transport history of the permit, we are proposing to adopt the standards for the modified DOT 2Q container found in DOT–SP 12573 as a variation on the DOT 2Q container design. This variation would be required to be marked as a ''DOT 2Q1.''

The requirements under DOT–SP 14503 operate differently in that the standard for the pressure of the contents is set at 75 °F to which we do not have an equivalent requirement under the HMR. Additionally, the SP provides for a range of pressure for functioning of the relief systems, specifically, 180 to 300 psig. And, finally there is no minimum burst pressure specified in DOT–SP 14503 so we must default to the DOT 2Q minimum burst pressure of 270 psig. The upper bound for the functional range exceeds the 2Q minimum burst pressure yet we do not have information on the actual tested burst pressure which could be much larger. Therefore, based on a similar proposal to implement provisions of DOT–SP 13601 for 2P containers (see the § 178.33c discussion), the upper bound of the functional range for a pressure relief system must be no greater than 80% of the test pressure. We invite comment on using this approach and whether it would be preferable to implement a requirement for the upper bound of the range based on the pressure of the contents.

Based on review of the permit and no discovery of incidents associated with the transport history of the permit, we are proposing to adopt the standards for the modified DOT 2Q container found in DOT–SP 14503 as a variation on the DOT 2Q container design. This variation would be required to be marked as a ''DOT 2Q2.'' Rather than repeat, in total, the DOT 2Q specification standards for each of these modified containers that have remained the same, we propose to implement the proposals in this section by instructing the reader that all standards for a DOT 2Q1 or a DOT 2Q2

remain as for a DOT 2Q except for the variations outlined in proposed new §§ 178.33d–2 and 178.33d–3. We invite comment on this method of implementing these modified DOT 2Q specification containers.

C. Cargo Tanks/Rail Cars/Portable Tanks

Part 173

Section 173.315

Section 173.315 specifies the bulk packaging provisions for liquefied compressed gases in UN and DOT specification cargo tanks and portable tanks. DOT–SP 12576 authorizes non-DOT specification cargo tanks for the transportation of UN1080, Sulfur hexafluoride, that otherwise conform to the MC 331 specifications except for design pressure, capacity, and marking. The cargo tanks are designed and built in conformance with Section VIII, Division 1, of the ASME Code, and the design pressure may not exceed 600 psig. Additionally, the water capacity range for each tank ranges from a minimum of 15 gallons to a maximum of 500 gallons. Based on our review of the permit and no discovery of compliance violations or incidents associated with the transport history of the permit, we are proposing to revise the § 173.315(a)(2) Table by referring to a new Note 28 in the entry for ''Division 2.2, materials not specifically provided for in this table'' as Sulfur hexafluoride is not listed by name in the table. New note 28 codifies such tanks specified in DOT–SP12576 for the transportation of Sulfur hexafluoride. PHMSA is soliciting comment on whether this amendment should include other compressed gases and whether the prescribed design pressure or capacity should be revised in a final rule.

Section 173.319

Section 173.319 prescribes the loading and packaging provisions for cryogenic liquids transported in tank cars. Currently, the HMR authorizes a maximum of 10 psig in a DOT 113C120W tank car containing UN1038, Ethylene, refrigerated liquid, when offered for transportation by rail. DOT–SP 12039 authorizes the transportation in commerce of DOT 113C120W tank cars containing Ethylene, refrigerated liquid, at an internal pressure of 20 psig instead of the maximum 10 psig. Based on our review of the permit and no discovery of compliance violations or incidents associated with the transport history of the permit, we are proposing to revise the paragraph (d)(2) Table by authorizing a maximum of 20 psig consistent with DOT–SP 12039.

D. Operational Air/Vessel

Part 172

Sections 172.101 (Hazardous Materials Table) and 172.102 Special Provisions

Section 172.101 provides instructions for using the Hazardous Materials Table (HMT) and the HMT itself. Column 7 of the HMT specifies codes for special provisions applicable to hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. When Column 7 of the HMT refers to a special provision for a hazardous material, the meaning and requirements of that special provision are as set forth in § 172.102 (Special provisions).

In this NPRM, PHMSA is proposing to revise Column 7 for several entries to add the vessel-specific special provision ''W11.'' This special provision would allow, when offered for transportation by vessel, certain materials to be offered in the same transport unit with foodstuffs and cargo of an organic nature provided a distance of 3m (10 feet) is maintained between the hazardous materials and foodstuffs or cargo of an organic nature. The affected entries are as follows:

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials.

- Benzaldehyde, UN1990
- Corrosive liquid, acidic, inorganic, n.o.s, UN3264, PG II and III
- Corrosive liquid, acidic, organic, n.o.s., UN3265, PG II and III
- Extracts, flavoring, liquid, UN1197, PG II and III
- Flammable liquids, corrosive, n.o.s., UN2924, PG III
- Phosphoric acid solution, UN1805

Special Provision W11

Currently, § 176.800(a) of the HMR specifies that each package requiring a Class 8 (corrosive) label being transported by vessel must be stowed clear from living quarters and away from foodstuffs and cargo of an organic nature. In addition, § 176.800(b) prohibits packages requiring a Class 8 (corrosive) label from being stowed over any readily combustible material. DOT–SP 11691 authorizes deviation from the segregation requirements for vessel stowage when shipped in the same transport unit of certain flammable, Class 9 (miscellaneous), and corrosive liquids that are the ingredients of soft drinks (beverages). DOT–SP 11691 also allows these packages of certain corrosive liquids to be stowed over packages of other specifically authorized flammable liquids. During the review of this SP, PHMSA noted that the transport conditions found in DOT–SP 11691 are different from the currently authorized segregation from foodstuffs requirements found in the International Maritime Dangerous Goods (IMDG) Code sections 7.3.4.2.1 and 7.3.4.2.2, in that a segregation distance of 3 m (10 ft) from foodstuffs is required by the IMDG Code.

Based on our review, DOT–SP 11691 did not reveal safety incidents associated with its transport history. Therefore, we are proposing to adopt new special provision ''W11'' to adopt the operational control provisions of DOT–SP 11691 as well as the additional requirement that packages requiring Class 8 labels must be separated within the transport unit by a distance of 3 m (10 ft) from foodstuffs and cargo of an organic nature. The SP includes specific technical names that are authorized, but to be more consistent with the IMDG Code provisions, PHMSA is proposing to extend the exception to all packages offered for transport under any of the proper shipping names (and associated packing group) to which this special provision is assigned. The proposed special provision W11 would allow entries assigned this special provision, when offered for transportation by vessel, to be offered in the same transport unit with foodstuffs and cargo of an organic nature provided a distance of 3m (10 feet) is maintained between the hazardous materials and foodstuffs or cargo of an organic nature. Class 8 (corrosive) materials assigned this special provision would also be allowed to be stowed over packages of flammable liquids also assigned this special provision.

Part 176

Section 176.90

Section 176.90 prescribes requirements for private automobiles carrying Class 1 hazardous materials on board ferry vessels. There are four SPs that provide relief for ferry transport of private automobiles carrying engines, gasoline, and propane. DOT–SP 7465, 11150, 13213, and 14458 all contain slightly different provisions to facilitate this process safely. Where differences exist between these permits, PHMSA has attempted to choose the least restrictive provision for adoption. PHMSA specifically requests comments on this approach.

PHMSA is proposing to renumber the existing lone paragraph as paragraph (a), and to add a new paragraph (b) to adopt an exception for ''Engines, internal

combustion, flammable gas powered *or* flammable liquid powered, including when fitted in machinery or vehicles (*i.e.* motor vehicles, recreational vehicles, campers, trailers), vehicle flammable liquid *or* flammable gas powered, gasoline, and petroleum gases, liquefied *or* liquefied petroleum gas'' when included as part of a motor home, recreational vehicle, camper, or trailer when carried on board ferry vessels subject to certain operational controls.

In this NPRM, PHMSA is proposing to revise this section to allow items normally offered as engines, vehicles, gasoline, or propane in private automobiles aboard ferry vessels to receive exceptions with certain restrictions. These restrictions include: (1) Cylinders must be visually inspected for defects, cracks, or leaks, and gasoline containers must show no signs of damage or leakage; (2) cylinders of liquefied petroleum gas must have the cylinders securely attached to recreational vehicles; (3) extra containers of gasoline (including camp stove or lantern fuel) and portable cylinders of liquefied petroleum gas (including cylinders for camping equipment) not securely attached to recreational vehicles must be stowed in the vessel's paint locker; (4) liquefied petroleum gas cylinders must be secured by closing the shut-off valves prior to the recreational vehicles being loaded on the vessel; (5) the owner or operator of each recreational vehicle must be directed to close all operating valves within the vehicles, (6) ''no smoking'' signs must be posted on the vehicle decks and, if used for storage of hazardous materials in close proximity to the vessel's paint locker; (7) a continuous patrol of the vehicle decks must be made by a crewmember, and any unusual or dangerous situation must be reported to the vessel's master; (8) passengers are allowed on the vehicle decks, but are subject to the control of the crew personnel conducting the continuous vehicle deck patrol; (9) vessel personnel responsible for performing any function in the proposed section must be trained in accordance with Subpart H of Part 172; and (10) shipments made under this section are subject to the Hazardous Materials Incident Reporting requirements.

E. Operational Highway/Rail/Shipper/Other

Part 171

Section 171.8

Section 171.8 defines terms generally used throughout the HMR that have broad or multi-modal applicability. PHMSA is proposing to add the following definition based on the proposed adoption of DOT–SP 11458:

Display pack: This term means a package intended to be placed on the floor of retail stores which is designed to provide direct customer access to consumer commodities contained within the package when all or part of the outer fiberboard packaging is removed.

DOT–SP 11458 authorizes the transportation in commerce of display packs of consumer commodity packages or limited quantity packages that exceed the 30 kg gross weight limit. The provisions of DOT–SP 11458 are being proposed for adoption into § 173.156. However, the term ''display pack'' is not currently defined in the HMR. Therefore, in this NPRM we are proposing to adopt the definition for ''display pack'' under § 171.8 based upon the definition found in DOT–SP 11458.

Part 172

Section 172.102

Section 172.102 lists Special Provisions applicable to the transportation of specific hazardous materials. Special Provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. PHMSA is proposing the following revisions to the § 172.102, Special Provisions:

Special Provision 380

PHMSA proposes to add Special Provision 380 to adopt SP 10705. This SP provides relief from the segregation requirements of § 177.848(d) for the transport of UN1092, Acrolein, stabilized by private carrier in a motor vehicle. The SP prescribes the packaging that must be used and the materials with which acrolien, stabilized may be loaded. The SP further specifies that the motor carrier must maintain a satisfactory safety rating as prescribed in part 385 of CFR Title 49. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to adopt its provisions in its entirety in this Special Provision. The provisions of DOT–SP 10705 are specific to UN1092, Acrolein, stabilized; therefore, this Special Provision is assigned exclusively to that HMT entry.

Special Provision 381

PHMSA proposes to add Special Provision 381 to adopt SP 7991. This SP provides relief from the HMR for the transportation of railroad flagging kits by highway. See § 173.184 for a detailed discussion of the proposed adoption of DOT–SP 7991. This Special Provision is assigned to the following HMT entries: Fusee (rail or highway) (NA1325, Division 4.1, PG II; Articles, pyrotechnic (UN0431, Division 1.4G, PG II); Signal Devices, hand (UN0373, Division 1.4S, PG II); Signal Devices, hand (UN0191, Division 1.4G, PG II); and Signals, railway track, explosive (UN0193, Division 1.4S, PG II).

Special Provision 382

PHMSA proposes to add Special Provision 382 to adopt SP 8006. This SP provides relief from the labeling requirements of § 172.400(a) for the transportation of toy plastic or paper caps for toy pistols by motor vehicle, railcar, cargo vessel, and cargo aircraft. See § 172.400a(a)(8) for a detailed discussion of the proposed adoption of DOT–SP 8006. This Special Provision is assigned to the following HMT entries: Articles, explosive, n.o.s. (UN0349) and Toy caps (UN0337).

Special Provision 383

PHMSA proposes to add Special Provision 383 to adopt SP 11356. This SP authorizes material meeting the conditions for high viscosity flammable liquids specified in § 173.121(b)(1)(i), (b)(1)(ii), and (b)(1)(iv), to be re-classed to Packing Group III for transportation by motor vehicle. The SP prescribes packaging, capacity limitations, and load securement requirements. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in the transportation of these materials while maintaining an equivalent level of safety, we are proposing to adopt the provisions of the SP in its entirety in this Special Provision. This Special Provision is assigned to the following HMT entries: Coating solution (UN1139, PG II) and paint (UN1263, PG II).

Special Provision 384

PHMSA proposes to add Special Provision 384 to adopt SP 11666. This SP authorizes the transportation of green graphite electrodes and shapes that are large single component solid objects not subject to sifting, in open rail flat cars, open bed motor vehicles, and intermodal containers. The SP prescribes load securement requirements for the electrodes and shapes. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in

the transportation of these articles and materials while maintaining an equivalent level of safety, we are proposing to adopt the provisions of the SP in its entirety in this Special Provision. This Special Provision is assigned to the following HMT entries: Other regulated substances, n.o.s. (NA3077, PG III) and Environmentally hazardous substances, solid, n.o.s. (UN3077, PG III)

Special Provision 385

PHMSA proposes to add Special Provision 385 to adopt SP 13343. This SP authorizes the use of cargo heaters when weather conditions are such that the freezing of certain wetted explosive material is likely. Shipments must be made by private, leased or contract carrier vehicles in exclusive use. Cargo heaters must be reverse refrigeration (heat pump) units. Shipments made in accordance with the SP are excepted from the anti-freeze requirements of § 173.60(b)(4). Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility to motor carriers engaged in the transportation of these explosive materials while maintaining an equivalent level of safety, we are proposing to adopt the provisions of the SP in its entirety in this Special Provision. The provisions of DOT–SP 13343 are specific to Trinitroresorcinol, wetted or Styphnic acid, *wetted with not less than 20% water, or mixture of alcohol and water by mass* (UN0394); therefore this Special Provision is assigned exclusively to that HMT entry.

Special Provision B130

PHMSA proposes to add Special Provision B130 to adopt SP 14525. This SP provides relief from the HMR except for the shipping paper requirements of Subpart C of Part 172, emergency response information as required by § 172.602, and the marking requirements of § 172.302,(a), (b), and (d) when transporting used diatomaceous earth filter material by highway. The SP prescribes packaging, quantity limitations, and the required method of storing the packages within the motor vehicle. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility to private motor carriers engaged in pest control operations while maintaining an equivalent level of safety, we are proposing to adopt the provisions of the SP in its entirety in this Special Provision. The provisions of SP 14525 are specific to self-heating solid, organic, n.o.s. (UN3088); therefore this Special Provision is assigned exclusively to that HMT entry.

Section 172.202

Section 172.202 establishes requirements for shipping descriptions on shipping papers. As part of these shipping paper requirements, in many situations a net or gross quantity of the hazardous materials must be included. SP 11811 provides relief from this requirement for local collections operations transporting hazardous materials and hazardous substances by highway that are ''household wastes'' as described in 40 CFR 261.4 and not subject to the Environmental Protection Agency's hazardous waste regulations in 40 CFR, Parts 262 and 263. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility to shippers while maintaining an equivalent level of safety, we are proposing to revise paragraph (c) of § 172.202 to adopt the provisions of SP 11811 in its entirety.

Section 172.315

Section 172.315 establishes requirements for the marking of packages containing limited quantities of hazardous materials. For transportation by highway by private carrier SP 11197 provides relief from the requirement to display the limited quantity marking on packages containing materials assigned to Packing Groups II and III prepared in accordance with the limited quantity requirements in Part 173. The relief offered by SP 11197 does not include materials assigned to Classes 1, and 7, and Division 6.1 and 6.2 materials. The SP prescribes inner packaging and package quantity limitations; the maximum gross weight of packages that may be transported in one vehicle; and special package marking requirements. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to add a new paragraph (a)(3) to § 172.315 to adopt the provisions of SP 11197 in its entirety.

Section 172.400a

Section 172.400a provides exceptions from the § 172.400 general labeling requirements for packages or containment devices containing hazardous materials and offered for transportation or transported in commerce. SP 8006 provides relief from the § 172.400 general labeling requirements for toy plastic or paper caps for toy pistols described as ''UN0349, Articles, explosive, n.o.s. (Toy caps), 1.4S, PG II'' or ''NA0337, Toy caps, 1.4S, PG II'' when offered for transportation by motor vehicle, rail freight, cargo vessel, and cargo aircraft. The toy plastic or paper caps must have been examined in conformance with § 173.56 and approved by the Associate Administrator for Hazardous Materials Safety. The SP specifies that the toy plastic or paper caps must be in the form of sheets, strips, rolls, or individual caps and further specifies the maximum average explosive composition of each cap. The SP also prescribes quantity limitations and packaging, segregation, and special marking requirements. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to add a new paragraph (a)(8) to § 172.400a to adopt the provisions of SP 8006 in its entirety.

Part 173

Section 173.12

Section 173.12 provides certain exceptions and authorizations for the transportation of waste materials. SP 11470 authorizes transportation by motor vehicle and cargo vessel of shrink-wrapped pallets containing boxes of waste ORM–D or limited quantity materials when marked with the word ''WASTE'' on the outside of the pallet instead of each individual box. The SP prescribes packaging and marking requirements for the waste materials. In addition, under a petition for rulemaking under petition number P–1611, COSTHA also requested that PHMSA adopt this SP into the HMR. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to add a new paragraph (h) to § 173.12 to adopt the provisions of SP 11470 in its entirety.

Section 173.29

Section 173.29 prescribes certain requirements, exceptions, and authorizations for the transportation of empty packagings. SP 9610 provides relief from complete shipping papers and the placarding requirements of subpart F of part 172 for smokeless powder residue when transported by motor vehicle or railcar in ''Container-on-flat-car'' (COCF) or ''Trailer-on-flat-

car'' (TOCF) service. The smokeless powder must be approved in conformance with § 173.56 as a Class 1 explosive substance. The SP prescribes packaging requirements, quantity limitations, operational controls, and a specific shipping description for the material. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to revise paragraph (f) of § 173.29 to adopt the provisions of SP 9610 in its entirety. We invite specific comment on the adoption of this SP pertaining to hazard communication.

Section 173.63

Section 173.63 provides certain packaging exceptions for the transportation of Class 1 (explosive) materials. SP 4850 authorizes Cord, detonating, *or* Fuse detonating, *metal clad* (UN0290, Div. 1.1D) to be renamed and reclassed as Cord, detonating, mild effect, *or* Fuse, detonating, mild effect, *metal clad* (UN0104, Div. 1.4D); and Charges, shaped, flexible, linear (UN0288, Div. 1.1D) to be renamed and reclassed ''Charges, shaped, flexible, linear (UN0237, Div. 1.4D) and transported by motor vehicle, railcar, cargo vessel, and cargo aircraft. The SP prescribes packaging requirements and quantity limitations. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to revise paragraph (a) of § 173.63 to adopt the provisions of SP 4850 in its entirety.

Section 173.156

Section 173.156 provides certain exceptions and authorizations for the transportation of limited quantities and other regulated materials (ORM). For transportation by railcar in trailer-on-flat-car (TOFC) or container-on-flat-car (COFC) service, or roadrailer and/or railrunner trailers or by motor vehicle, or cargo vessel SP 11458 authorizes *display packs* of consumer commodity packages that exceed 30 kg gross weight. See § 171.8 for a discussion of the proposed addition of the definition of ''display pack.'' The SP prescribes packaging and marking requirements and quantity limitations. In addition, in a petition for rulemaking under petition number P–1607, COSTHA requested PHMSA adopt this SP into the HMR. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to add a new paragraph (c) to § 173.156 to adopt the provisions of SP 11458 in its entirety.

The proposed adoption of SP 11470 relating to exceptions for waste limited quantity and ORM–D materials is discussed in § 173.12. We are proposing to add a new paragraph (d) to § 173.156 to direct the reader to the proposed new paragraph (h) of § 173.12 which adopts the provisions of SP 11470.

Section 173.159

Section 173.159 prescribes packaging requirements for wet batteries. For transportation by motor vehicle, railcar, cargo vessel and passenger and cargo aircraft, SP 11078 excepts the transportation of nickel cadmium batteries containing potassium hydroxide, a Class 8 material from the other requirements of the HMR. The SP prescribes packaging requirements and quantity limitations. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to add a new paragraph (j) to § 173.159 to adopt the provisions of SP 11078 in its entirety.

Section 173.168

Section 173.168 prescribes specific approval, testing, protection, packaging, and equipment marking requirements for chemical oxygen generators. SP 11984 authorizes certain unapproved chemical oxygen generators with only one positive means of preventing unintentional actuation of the generator, and without the required approval number marked on the outside of the package, to be transported by motor vehicle, railcar, and cargo vessel. The SP prescribes packaging, testing and marking requirements. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to add a new paragraph (g) to § 173.168 to adopt the provisions of SP 11984 in its entirety.

Section 173.184

Section 173.184 prescribes specific packaging requirements for the transportation of highway or rail fusees. Flagging kits transported on railroad motor vehicles including privately owned motor vehicles under the direct control of on-duty railroad employees, in conformance with SP 7991, are excepted from the requirements of the HMR. Flagging kits can only contain fusees and railroad torpedoes described as; Fusee (rail or highway) (NA1325, Division 4.1, PG II); Articles, pyrotechnic (UN0431, Division 1.4G, PG II); Signal devices, hand (UN0373, Division 1.4S, PG II); Signal devices, hand (UN0191, Division 1.4G, PG II); and Signals, railway track, explosive (UN0193, Division 1.4S, PG II). The SP prescribes packaging requirements, quantity limitations and operational controls. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to add a new paragraph (c) to § 173.184 to adopt the provisions of SP 7991 in its entirety.

Section 173.226

Section 173.226 prescribes specific packaging requirements for the transportation of Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A. When transported as prescribed in SP 11055, liquid hazardous materials in Division 6.1 Packing Group I, Hazard Zone A are excepted from the segregation requirements of §§ 174.81, 176.83, and 177.848(d). The SP prescribes packaging and testing requirements, quantity limitations, and cushioning and absorbent material requirements. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to add a new paragraph (f) to § 173.226 to adopt the provisions of SP 11055 in its entirety.

Section 173.306

Section 173.306 provides exceptions for limited quantities of compressed gas. SP 13199 permits reconditioned (used) refrigerating machines (UN2857, Div. 2.2) to be transported under the requirements prescribed in § 173.306(e) and excepted from the marking requirements of § 172.302(c) when transported by motor vehicle, and meeting certain structure and Class A refrigerant gas weight requirements. The SP also prescribes operational controls and testing requirements. Section 173.306(e) currently permits only new (unused) refrigerating machines to be excepted from specification packaging, placarding, and certain rail and highway

modal requirements. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to a add new paragraph (e)(2) to § 173.306 to adopt the provisions of SP 13199 in its entirety.

Section 173.322

Section 173.322 prescribes specific packaging requirements for the transportation of ethyl chloride. SP 14422 authorizes transportation by motor vehicle, railcar, or cargo vessel of four ounces or less of ethyl chloride, packaged in a DOT–2P or DOT–2Q container as a consumer commodity. The SP prescribes quantity limitations and packaging, testing and marking requirements. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in transportation while maintaining an equivalent level of safety, we are proposing to and add a new paragraph (f) to § 173.322 to adopt the provisions of SP 14422 in its entirety.

Part 174

Section 174.67

Section 174.67 establishes specific operational requirements for railroad tank car unloading. For combustible liquid or Class 3 liquid petroleum distillate fuels, SP 12002 authorizes clearing frozen liquid blockages from the outlet by attaching a fitting to the outlet line and applying nitrogen at a pressure of 50 to 100 psi. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in rail operations while maintaining an equivalent level of safety, we are proposing to revise paragraph (g) to § 174.67 to adopt the provisions of SP 12002 in its entirety.

Part 177

Section 177.820

SPs 11352, 12207, 12306, 13165, and 14945 authorize the movement of certain hazardous materials across public roads. Such movements are not subject to Subparts C (Shipping Papers), D (Marking), E (Labeling), and F (Placarding) of Part 172. The SPs prescribe operational controls. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in rail operations while maintaining an equivalent level of safety, we are proposing to add a new § 177.820 to adopt the provisions of these SPs in their entirety.

Section 177.834

Section 177.834 establishes general operational requirements for transportation by highway. SPs 9874, 13190, 13424, 13959, 14141, 14150, 14680, 14822, 14827, and 14840 authorize ''attendance'' of the loading or unloading of a cargo tank by a qualified person observing all loading or unloading operations by means of a video monitor located at a remote control station. These SPs prescribe operational controls and specific requirements for the video monitoring system. Based on our review, the fact that transportation conducted under these SPs have an acceptable safety record, and adopting them would provide flexibility in operations while maintaining an equivalent level of safety, we are proposing to revise paragraph (i)(3) and (i)(4) of § 177.834 to adopt the provisions of these SPs in their entirety.

SPs 13484 and 14447 authorize ''attendance'' of the loading or unloading of a cargo tank through the use of hoses equipped with cable connected wedges, plungers, or flapper valves located at each end of the hose, able to stop the flow of product from both the source and the receiving tank within one second without human intervention in the event of a hose rupture, disconnection, or separation. The SPs prescribe inspection requirements and operational controls for use of the hoses. Based on our review, the fact that transportation conducted under these SPs have an acceptable safety record, and adopting them would provide flexibility in operations while maintaining an equivalent level of safety, we are proposing to revise paragraphs (i)(3) and (i)(4) of § 177.834 to adopt the provisions of SPs 13484 and 14447 in their entirety.

SPs 10597, 10803, 10882, 14618, and 14726 authorize the use of diesel or propane fueled combustion cargo heaters in motor vehicles used to transport Class 3 (flammable liquid) or Division 2.1 (flammable gas) materials. The SPs prescribe operational controls for use of the heaters. Based on our review, the fact that transportation conducted under these SPs have an acceptable safety record, and adopting them would provide flexibility in operations while maintaining an equivalent level of safety, we are proposing to revise paragraph (l)(2)(i) of § 177.834 to adopt the provisions of these SPs in their entirety. In this NPRM, as the existing paragraph (l)(2)(ii) of § 177.834 relating to the *Effective date for combustion heater requirements* is obsolete, we are proposing its removal. In addition, we are also proposing the redesignation of paragraph (l)(2)(iii) of § 177.834 to paragraph (l)(2)(ii).

Section 177.838

Section 177.838 establishes specific operational requirements for the transportation of Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (self-heating and pyrophoric liquid) materials. Notwithstanding the segregation requirements of § 177.848(d), SP 11373 authorizes the transport on the same transport vehicle of Sodium hydrosulfite *or* sodium dithionite, UN1384, in Packing Group II or III; Thiourea dioxide, UN33341, in Packing Group II or III; and Self-heating, solid, organic, n.o.s., UN3088, in Packing Group II or III, with Class 8 materials. The SP prescribes packaging and separation requirements. Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in highway operations while maintaining an equivalent level of safety, we are proposing to revise the title of § 177.838 and add a new paragraph (i) to § 177.838 to adopt the provisions of SP 11373 in its entirety.

Section 177.840

Section 177.840 establishes specific operational requirements for the transportation of Class 2 (gases) materials. Notwithstanding the segregation requirements of § 177.848(d), SP 11043 authorizes the transport on the same transport vehicle of Division 2.3, Hazard Zone A materials with materials classed as Division 2.1, Class 3, Class 4, Class 5, and Class 8. The SP prescribes packaging, marking, separation requirements.

Notwithstanding the segregation requirements of § 177.848(d), SP 14335 authorizes the transport on the same transport vehicle of Division 2.3, Hazard Zone A materials with specification non-bulk packagings and IBCs containing only the residue of Division 2.1, 4.3, 5.1, and Class 3 and 8 materials. The SP prescribes separation and securement requirements, operational controls, quantity limitations, and carrier safety rating requirements.

Based on our review, the fact that transportation conducted under these

SPs have an acceptable safety record, and adopting them would provide flexibility in highway operations while maintaining an equivalent level of safety, we are proposing to add a new paragraph (a)(3) to § 177.840 to adopt the provisions of SPs 11043 and 14335 in their entirety.

Section 177.841

Section 177.841 establishes specific operational requirements for the transportation of Division 6.1 and Division 2.3 materials. Notwithstanding the segregation requirements of § 177.848(d), SP 11151 authorizes transportation by highway by private or contract motor carrier of Division 6.1 Packing Group I, Hazard Zone A materials meeting the definition of a hazardous waste as provided in § 171.8 on the same transport vehicle with materials classed as Class 3, Class 4, Class 5, and Class 8. The Division 6.1 Packing Group I, Hazard Zone A materials must be loaded on pallets and separated from the Class 3, Class 4, Class 5, and Class 8 materials by a minimum horizontal distance of 2.74 m (9 feet). Based on our review, the fact that transportation conducted under this SP has an acceptable safety record, and adopting it would provide flexibility in highway operations while maintaining an equivalent level of safety, we are proposing to add a new paragraph (f) to § 177.841 to adopt the provisions of SP 11151 in its entirety.

F. Non-Bulk Packaging Specifications/ IBCs

Part 172

Section 172.101

The § 172.101 HMT designates the materials listed therein as hazardous materials for the purpose of transportation of those materials. For each listed material, the HMT identifies the hazard class or specifies that the material is forbidden in transportation, and gives the proper shipping name or directs the user to the preferred proper shipping name. In addition, the HMT specifies or references requirements in this subchapter pertaining to labeling, packaging, quantity limits aboard aircraft, and stowage of hazardous materials aboard vessels. We are proposing to revise several entries in the HMT to adopt SPs relating to non-bulk packagings and IBCs. Specifically, for ''UN1415, Lithium,'' ''UN2257, Potassium,'' ''UN3190, Self-heating solid, inorganic, n.o.s.,'' ''UN1428, Sodium,'' ''UN1381, Phosphorus, yellow, under water'' and ''UN2813, Water-reactive solid, n.o.s.'' for Packing Groups II and III, we are proposing to add a reference to § 173.151 to provide packaging exceptions for relevant Hazard Class 4 materials. These proposed revisions are discussed below.

Part 173

Section 173.62

Section 173.62 provides specific packaging requirements for explosives. DOT–SP 12335 authorizes the transportation in commerce by motor vehicle, cargo vessel, and cargo aircraft when authorized in the HMT and passenger-carrying aircraft, when authorized for carriage by hazmat table and used exclusively to transport personnel to remote work sites of certain Division 1.1D and 1.4D detonating cords without the ends being sealed in alternative packaging, provided that the inner packaging containing the detonating cord is made of a static-resistant plastic bag of at least 3 mil thickness and the bag is securely closed for transportation. We have noted nine violations related to shipments moving under DOT–SP 12335. However, the violations did not involve safety issues with the permit. Thus, we propose to adopt the provisions of the SP in its entirety in § 173.62.

Section 173.150

Section 173.150 provides exceptions from the HMR for certain Class 3 flammable liquid material. This section includes exceptions for limited quantities, consumer commodities, alcoholic beverages, aqueous solutions of alcohol and combustible liquids. In this NPRM, PHMSA is proposing to add a paragraph (h) to include an exception that would permit Diesel fuel (UN1202 or NA1993) and Gasoline (UN1203) to be transported one way, by motor vehicle, directly from the loading location to an equipment repair facility in non-specification non-bulk packaging, known as a gasoline dispenser. Specifically, shipments wishing to use this exception would be required to transport the material in a gasoline dispenser and prior to loading, each dispenser must be capped or plugged all product inlet and outlet piping, so that no fluid may be released during transportation. Furthermore, no dispenser may contain more than 2 gallons of gasoline, and each dispenser must be blocked, braced or strapped to the motor vehicle to prevent movement during transportation. This revision is proposed to adopt DOT–SP 13217. Based on our review, the fact the SP has no violations or reported incidents, and adopting it would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in § 173.150.

Section 173.151

Section 173.151 provides exceptions for Class 4 materials. In this NPRM we are proposing to add new paragraph (e) that would except ''Lithium, UN1415,'' ''Potassium, UN2257,'' and ''Sodium, UN1428,'' with a net quantity of material per inner packaging not exceeding 25 grams, from the labeling requirements of Part 172, Subpart E and the placarding requirements of Part 172 Subpart F, if they are offered for transportation or transported in the packagings with conditions set forth in that paragraph. We are also establishing new paragraph (f) to authorize shipment of Self-heating solid, inorganic, n.o.s, in unlined, non-DOT specification multi-wall paper bags containing a maximum of 55 pounds (net) weight. We are further adding new paragraph (g) to authorize Water reactive solid, n.o.s. (contains magnesium, magnesium nitrides) in Packing Group II or III to be contained in sift-proof bulk packagings. These revisions would adopt DOT–SP 11602, 13796, and 15373.

DOT–SP 11602 authorizes the transportation in commerce of certain Division 4.3 materials contained in sift-proof closed bulk packagings that prevent that prevent water from reaching the hazmat and have sufficient venting to preclude a dangerous accumulation of gaseous emissions. Based on our review, the fact the SP has no violations or reported incidents, and adopting it would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in § 173.151.

DOT–SP 13796 authorizes the transportation in commerce of ''UN1381, Phosphorus, yellow, under water,'' in a 30 gallon UN 1A2 steel drum certified as a minimum to the PG I performance level for solids and the PG II performance level for liquids and as a minimum dual marked as a UN1A2/X400/S (for solid) and UN1A2 Y/1.4/150 (for liquids). Based on our review, the fact the SP has no violations or reported incidents, and that its adoption would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in § 173.151.

DOT–SP 15373 authorizes the manufacture, mark, sale and use of the specially designed combination packagings described herein for transportation in commerce of ''UN1415, Lithium,'' ''UN2257, Potassium,'' and ''UN1428, Sodium8,'' without hazard labels or placards, with quantity limits not exceeding 25 grams.

Based on our review, the fact the SP has no violations or reported incidents, and adopting it would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in § 173.151.

Section 173.154

Section 173.154 provides exceptions for Class 8, corrosive materials. We are proposing to establish a new paragraph (b)(3) to authorize polyethylene bottles with rated capacities of one gallon (3.785 liters), packed inside an open-top, heavy wall, high density polyethylene box for shipping Packing Group II and III corrosives. We are also proposing to establish new paragraph (e) to authorize hydrochloric acid concentration not exceeding 38%, in Packing Group II to be contained in UN31H1 or UN31HH1 intermediate bulk containers when loaded in accordance with the requirements of § 173.35(h). These revisions would adopt DOT–SP 6614, 12030, and 14137.

DOT–SP 6614 authorizes the use of polyethylene bottles placed in a polyethylene crate for the transportation in commerce of ''Compounds, cleaning liquid (consisting of solutions containing potassium hydroxide, hydrochloric acid or phosphoric acid), NA1760, PG II or III,'' ''Corrosive liquid, basic, inorganic, n.o.s. (Potassium hydroxide), PG II, and Corrosive liquid, basic, inorganic, n.o.s. (Sodium hydroxide), PG II, UN3266,'' ''Corrosive liquid, acidic, inorganic, n.o.s. (Phosphoric acid and Nitric acid), UN3264, PG II'' ''Corrosive liquid, acidic, organic, n.o.s. (Glycolic acid), UN3265, PG III'' ''Hypochlorite solutions, UN1791, PG III,'' ''Hydrochloric acid solution (with not over 32% strength), UN1789, PG II'' and ''Sulfuric acid (with not more than 51% acid), UN2796, PG II.'' PHMSA has on file sixty-seven violations related to shipments moving under DOT–SP 6614. However, the violations did not involve safety issues with the permit. We are proposing to adopt the permit, and extend it to all corrosive materials of Packing Groups II or III based on the history of no violations involving safety issues and no reported incidents.

DOT–SP 12030 authorizes the transportation in commerce of a combination packaging with a maximum gross weight not over 37.0 kg, consisting of one UN6HG2 composite packaging containing battery fluid and one UN4G fiberboard box containing a dry storage battery. The UN6HG2 composite packaging has a maximum capacity of 8.0 liters and is marked as meeting the requirement for Packaging Group II. Based on our review, the fact the SP has no violations or reported incidents, and adopting it would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in a new paragraph (f) in § 173.154.

DOT–SP 14137 authorizes the transportation in commerce of certain hydrochloric acid solutions in UN31H1 or UN31HH1 when loaded in conformance with the requirements in § 173.35(h) and the hydrochloric acid concentration does not exceed 38%. Based on our review, the fact the SP has no violations or reported incidents, and adopting it would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in § 173.154.

Section 173.158

Section 173.158 provides general requirements and exceptions for shipments and packagings of nitric acid. In this NPRM, we are proposing to establish a new paragraph (i) to authorize ''Nitric acid of up to 40% concentration'' in a UN1H1 non-removable head plastic drums with certain conditions set forth in that paragraph and add new paragraph (j) for the transportation of ''Nitric acid, other than red fuming, with more than 70% nitric acid'' and ''Nitric acid, other than red fuming, with not more than 70% nitric acid'' in a combination packaging when offered for transportation or transported by rail, highway, or cargo vessel. These proposed revisions would adopt DOT–SP 8230 and 14213.

DOT–SP 8230 authorizes the transportation in commerce of Packing Groups I and II nitric acids in certain combination packagings by motor vehicle, rail freight, cargo vessel and cargo-only aircraft. Specifically, ''Nitric acid, other than red fuming, with more than 70% nitric acid'' and ''Nitric acid, other than red fuming, with not more than 70% nitric acid'' is authorized to be transported in inner plastic bottles in rigid foam plastic receptacles or plastic bags lined absorbent material in outer packagings. Based on our review, the fact the SP has no violations or reported incidents, and adopting it would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in § 173.158.

DOT–SP 14213 authorizes the manufacture, marking, sale and use of UN1H1 plastic drums to be used for the transportation in commerce of nitric acid with not more than 40% nitric acid. Based on our review, the fact the SP has no violations or reported incidents, and adopting it would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in § 173.158.

Section 173.159

Section 173.159 provides packaging and shipping specifications and exceptions for wet batteries. We are proposing to revise paragraph (e) to include both shipments of electric storage batteries containing electrolyte or corrosive battery fluid, and electric storage batteries and battery acid. This change would adopt DOT–SP 13548.

DOT–SP 13548 authorizes the transportation in commerce of lead acid batteries and packages of battery acid with two different UN numbers on the same motor vehicle with the packages secured against movement. Based on our review, the fact the SP has no violations or reported incidents, and adopting it would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in § 173.159.

Section 173.181

Section 173.181 sets forth packaging and shipping requirements for Pyrophoric materials (liquids). In this NPRM, we are proposing to add new paragraph (d) to authorize the transportation in commerce of certain pyrophoric materials in a combination package consisting of UN1A2 outer package and a UN1A1 inner package. This revision would adopt DOT–SP 12920.

DOT–SP 12920 authorizes the transportation in commerce of certain pyrophoric materials in a combination package consisting of UN1A2 outer package and a UN1A1 inner package, with no more than two (2) inner drums placed inside the outer drum. PHMSA has on file six violations related to shipments moving under DOT–SP 12920. However, the violations did not involve safety issues with the permit; rather, they pertained to non-compliance with the permit or the HMR. Based on our review, the fact the SP has no violations involving safety issues with the permit and no reported incidents, and adopting it would expand the general applicability in a safe manner, we are proposing to adopt its provisions in its entirety in § 173.181.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). Section 5103(b) authorizes

the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This rulemaking proposes adoption of certain special permits into the hazardous materials regulations.

B. Executive Order 12866, Executive Order 13563, Executive Order 13610, and DOT Regulatory Policies and Procedures

This proposed rulemaking is not considered a significant regulatory action under Executive Order 12866 (''Regulatory Planning and Review''), as supplemented and reaffirmed by Executive Order 13563 (''Improving Regulation and Regulatory Review''), stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives, and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. By building off of each other, these three Executive Orders require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

In this notice of proposed rulemaking, PHMSA is proposing to amend the HMR to adopt provisions contained in certain widely-used or long-standing SPs that have an established safety record. The proposed revisions are intended to provide wider access to the regulatory flexibility offered in SPs and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. PHMSA assumes that for most regulated entities in these categories, the revisions proposed in this notice of proposed rulemaking requires little or no change to existing practice or behavior and incremental compliance costs will thus be close to zero. At the same time, the potential for additional safety benefits is also very limited in these cases, as existing practice and operations are already minimizing the number of incidents.

Estimated benefits associated with this rule result from the regulated community no longer being required to apply for SP sand amount to approximately $12,000 annually. Costs associated with the rule are estimated to be negligible annually. Current SP holders are already complying with the proposed requirements and, if adopted, these requirements would not impose new requirements on current non-holders of SPs. The overall costs and benefits of the rule are dependent on the level of pre-existing compliance and the overall effectiveness of the new requirements specified in this rulemaking

C. Executive Order 13132

This notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), 64 FR 43255 (Aug. 10, 1999) and the President's May 20, 2009 memorandum (74 FR 24693 [May 22, 2009]). The requirements in this proposed rule would preempt state, local, and Indian tribe requirements but would not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.,* contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of these subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than 2 years after the date of issuance.

This proposed rule would address subject areas (1), (2), (3), and (5) above and would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. The effective date of Federal preemption is April 30, 2015.

D. Executive Order 13175

This notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The primary costs to small entities associated with this proposed rule include developing and updating a risk assessment, developing and updating operating procedures, and additional training for hazmat employees who perform loading and unloading operations.

PHMSA expects the impacts of this rule will be limited for many small entities due to their compliance with other existing Federal regulations. In this notice of proposed rulemaking, PHMSA also explicitly acknowledges that many regulated entities are holders of SPs or are part of industry associations with voluntary codes of safe practice, and that these may be sufficient for compliance with the proposed rule as long as all of the relevant safety areas are addressed and documented. For regulated entities in

these categories, the notice of proposed rulemaking requires little or no change to existing practices or behavior and incremental compliance costs will thus be close to zero. Therefore, the benefit and cost figures discussed below should be viewed as upper bounds, both of which will be reduced by the extent of current practice.

PHMSA estimates that there are 50 potentially affected small entities. The annualized documentation cost for developing and updating the risk assessment and the operating procedures is estimated to be $375/small entity. The annualized cost of additional training for affected employees is estimated to be approximately $5.50/employee. Further, PHMSA estimates that approximately 50% of small businesses are already implementing procedures that would be compliant with this notice of proposed rulemaking. Based upon the above estimates and assumptions, PHMSA certifies that this notice of proposed rulemaking does not have a significant economic impact on a substantial number of small entities. Further information on the estimates and assumptions used to evaluate the potential impacts to small entities is available in the Regulatory Impact Assessment that has been placed in the public docket for this rulemaking.

F. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control No. 2137–0051, entitled ''Special Permits and Approvals,'' expiring on May 31, 2015. Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This rulemaking adds new exceptions to the HMR while eliminating the need for persons to apply for a SP, resulting in a decrease in burden. PHMSA estimates the reduction in information collection burden as follows:

OMB Control No. 2137–0051:	SPs and Approvals
Decrease in Annual Number of Respondents:	98
Decrease in Annual Responses:	98
Decrease in Annual Burden Hours:	196
Decrease in Annual Burden Cost:	$12,337.00

There are 728 grantees associated with the 98 special permits being proposed for adoption in this rulemaking. Over 10 years, a SP would on average be renewed twice, resulting in 1,456 renewals (728 × 2). The average number of applications per year would be approximately 146 (1,456/10). The annual estimated cost savings would total $12,337.00 (146 number of renewals per year × $39.50/hr. preparation cost; 146 renewals per year × $45.00/hr compliance cost).

Please direct your requests for a copy of this final information collection to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC 20590–0001.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This notice of proposed rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. PHMSA has concluded that the rule will not impose annual expenditures of $141.3 million on State, local, or tribal governments or the private sector, and thus does not require an Unfunded Mandates Act analysis.

I. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

J. Environmental Assessment

PHMSA proposes to adopt provisions contained in certain widely-used or long-standing SPs that have an established safety record. The proposed revisions are intended to provide wider access to the regulatory flexibility offered in SPs and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4375, requires that federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during

the consideration process. 40 CFR 1508.9(b). A detailed NEPA assessment has been placed in the docket for this rulemaking for public review.

K. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) which may be viewed at: *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf*.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (*15 U.S.C. 272* note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.* specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies.

This proposed rulemaking does not involve voluntary consensus standards.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Incorporation, Radioactive materials, and Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 101, section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 2. In § 171.8, the definition of ''Display pack'' is added in alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Display pack means a package intended to be placed at retail stores which provides direct customer access to consumer commodities contained within the package when all or part of the outer fiberboard packaging is removed.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 4. In § 172.101, the Hazardous Materials Table is amended by revising entries under ''[REVISE]'' in the appropriate alphabetical sequence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REVISE].												
	*	*	*	*	*	*	*	*	*	*			
	Acrolein, stabilized	6.1	UN1092	I	6.1, 3	1, B9, B14, B30, B42, B77, T22, TP2, TP7, TP13, TP38, TP44, 380.	None	226	244	Forbidden	Forbidden	D	40
	*	*	*	*	*	*	*	*	*	*			
G	Articles, explosives, n.o.s.	1.4S	UN3049	II	1.4S	101, 382	None	62	None	25 kg	100 kg	01	25
	*	*	*	*	*	*	*	*	*	*			
	Articles, pyrotechnic *for technical purposes.*	1.4G	UN0431	II	1.4G	381	None	62	None	Forbidden	75 kg	02	25
	*	*	*	*	*	*	*	*	*	*			
+	Benzaldehyde	9	UN1990	III	9	IB3, T2, TP1, W11.	155	203	241	100 L	220 L	A.	
	*	*	*	*	*	*	*	*	*	*			
	Coating solution (*includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining*).	3	UN1139	II	3	149, IB2, T4, TP1, TP8, 383.	150	202	242	5 L	60 L	B	
	*	*	*	*	*	*	*	*	*	*			
G	Corrosive liquid, acidic, inorganic, n.o.s.	8	UN3264	I	8	A6, B10, T14, TP2, TP27.	None	201	243	0.5 L	2.5 L	B	40
				II	8	B2, IB2, T11, TP2, TP27, W11.	154	202	242	1 L	30 L	B	40
				III	8	IB3, T7, TP1, TP28, W11.	154	203	241	5 L	60 L	A	40
G	Corrosive liquid, acidic, organic, n.o.s.	8	UN3265	I	8	A6, B10, T14, TP2, TP27.	None	201	243	0.5 L	2.5 L	B	40

					II	8	B2, IB2, T11, TP2, TP27, W11.	154	202	242	1 L	30 L	B		40
					III	8	IB3, T7, TP1, TP28, W11.	154	203	241	5 L	60 L	A		40
*	*	*	*	*	*	*	*	*	*	*	*	*					
G	Environmentally hazardous substance, solid, n.o.s.	9	UN3077	III	9	8, 146, 335, A112, B54, B120, IB8, IP3, N20, N91, T1, TP33, 384.	155	213	240	No limit	No limit	A					
*	*	*	*	*	*	*	*	*	*	*	*	*					
	Extracts, flavoring, liquid.	3	UN1197	II	3	149, IB2, T4, TP1, TP8, W11.	150	202	242	5 L	60 L	B					
				III	3	B1, IB3, T2, TP1, W11.	150	203	242	60 L	220 L	A					
*	*	*	*	*	*	*	*	*	*	*	*	*					
	Fireworks	1.4S	UN0337	II	1.4S	108, 382	None	62	None	25 kg	100 kg	01		25			
*	*	*	*	*	*	*	*	*	*	*	*	*					
G	Flammable liquids, corrosive, n.o.s.	3	UN2924	I	3, 8	T14, TP2	None	201	243	0.5 L	2.5 L	E		40			
				II	3, 8	IB2, T11, TP2, TP27.	150	202	243	1 L	5 L	B		40			
				III	3, 8	B1, IB3, T7, TP1, TP28, W11.	150	203	242	5 L	60 L	A		40			
*	*	*	*	*	*	*	*	*	*	*	*	*					
D	Fusee (*railway or highway*).	4.1	NA1325	II	4.1	381	None	184	None	15 kg	50 kg	B					
*	*	*	*	*	*	*	*	*	*	*	*	*					
	Lithium	4.3	UN1415	I	4.3	A7, A19, IB4, IP1, N45.	151	211	244	Forbidden	15 kg	E		52			
*	*	*	*	*	*	*	*	*	*	*	*	*					
D G	Other regulated substances, solid, n.o.s.	9	NA3077	III	9	B54, IB8, IP2, T1, TP33, 384.	155	213	240	No limit	No limit	A					

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*	*	*	*	*	*	*	*	*	*	*		
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler and liquid lacquer base.*	3	UN1263	II	3	149, B52, IB2, T4, TP1, TP8, TP28, 383.	150	173	242	5 L	60 L	B	
	*	*	*	*	*	*	*	*	*	*	*		
	Petroleum gases, liquefied *or* Liquefied petroleum gas.	2.1	UN1075		2.1	T50, N95 ..	306	304	314, 315	Forbidden	150 kg	E	40
	*	*	*	*	*	*	*	*	*	*	*		
	Phosphoric acid solution.	8	UN1805	III	8	A7, IB3, N34, T4, TP1, W11.	154	203	241	5 L	60 L	A	
	*	*	*	*	*	*	*	*	*	*	*		
	Phosphorus, white dry *or* Phosphorus, white, underwater *or* Phosphorus white, in solution *or* Phosphorus, yellow, dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution.	4.2	UN1381	I	4.2, 6.1	B9, B26, N34, T9, TP3, TP31.	151	188	243	Forbidden	Forbidden	E	
	*	*	*	*	*	*	*	*	*	*	*		
	Potassium	4.3	UN2257	I	4.3	A7, A19, A20, B27, IB4, IP1, N6, N34, T9, TP7, TP33.	151	211	244	Forbidden	15 kg	D	52
	*	*	*	*	*	*	*	*	*	*	*		
	Propane, *see also* Petroleum gases, liquefied.	2.1	UN1978		2.1	19, T50, N95.	306	304	314, 315	Forbidden	150 kg	E	40
	*	*	*	*	*	*	*	*	*	*	*		
G	Self-heating solid, inorganic, n.o.s.	4.2	UN3190	II	4.2	IB6, IP2, T3, TP33.	151	212	241	15 kg	50 kg	C	
				III	4.2	IB8, IP3, T1, TP33.	151	213	241	25 kg	100 kg	C	

		*	*	*	*	*	*	*	*	*	*				
G	Self-heating solid, organic, n.o.s.		4.2	UN3088	III	4.2	IB8, IP3, T1, TP33, B130.	None	213	241	25 kg	100 kg	C		
		*	*	*	*	*	*	*	*	*	*				
	Signal devices, hand.		1.4G	UN0191	II	1.4G	381	None	62	None	Forbidden	75 kg	02		25
		*	*	*	*	*	*	*	*	*	*				
	Signal devices, hand.		1.4S	UN0373	II	1.4S	381	None	62	None	25 kg	100 kg	01		25
		*	*	*	*	*	*	*	*	*	*				
	Signals, railway track, explosive.		1.4S	UN0193	II	1.4S	381	None	62	None	25 kg	100 kg	01		25
		*	*	*	*	*	*	*	*	*	*				
	Sodium		4.3	UN1428	I	4.3	A7, A8, A19, A20, B9, B48, B68, IB4, IP1, N34, T9, TP7, TP33, TP46.	151	211	244	Forbidden	15 kg	D		52
		*	*	*	*	*	*	*	*	*	*				
	Trinitroresorcinol, wetted *or* Styphnic acid, wetted *with not less than 20 percent water, or mixture of alcohol and water by mass.*		1.1D	UN0394	II	1.1D	385	None	62	None	Forbidden	Forbidden	04		25, 5E
		*	*	*	*	*	*	*	*	*	*				
G	Water-reactive solid, n.o.s.		4.3	UN2813	I	4.3	IB4, N40, T9, TP7, TP33.	None	211	242	Forbidden	15 kg	E		40
					II	4.3	IB7, IP2, T3, TP33.	151	212	242	15 kg	50 kg	E		40
					III	4.3	IB8, IP4, T1, TP33.	151	213	241	25 kg	100 kg	E		40

* * * * *

■ 5. In § 172.102:

■ a. In paragraph (c)(1), special provisions 380, 381, 382, 383, 384, and 385 are added in numerical sequence.

■ b. In paragraph (c)(3), special provision B130 is added in numerical sequence.

■ c. In paragraph (c)(5), special provision N95 is added in numerical sequence.

■ d. In paragraph (c)(9), special provision W11 is added in numerical sequence.

The additions are to read as follows:

§ 172.102 Special Provisions.

* * * * *

(c) * * *

(1) * * *

380 For transportation by private carrier in a motor vehicle, acrolein, stabilized is not subject to the segregation requirements of § 177.848(d) of this subchapter if the following requirements are met:

a. The material is packaged in a DOT Specification 4BW240 cylinder, or in a DOT 51 portable tank.

b. The material may only be loaded with Class 3, Class 8, and Division 4.1 materials in Packing Group II or III.

c. The motor carrier must maintain a ''satisfactory'' safety rating as prescribed in part 385 of this title.

381 For railroad flagging kits, see § 173.184 (c) of this subchapter.

382 When packaged as prescribed in § 172.400a(a)(8), a package containing this material is excepted from the labeling requirements of § 172.400(a) of this subchapter.

383 For transportation by motor vehicle, material meeting the conditions for high viscosity flammable liquids specified in § 173.121(b)(1)(i), (b)(1)(ii), and (b)(1)(iv), may be re-classed to Packing Group III. Packaging must be UN standard metal drums attached with heavy duty steel strapping to a pallet. The capacity of each drum must not exceed 220 L (58 gallons).

384 For green graphite electrodes and shapes that are large single component solid objects not subject to sifting, transport in open rail flat cars, open bed motor vehicles, and intermodal containers is also authorized. The objects must be secured to the flat car, motor vehicle, intermodal container, or unitized by steel banding to wooden runners or pallets and the units secured to the flat car, motor vehicle, or freight container to prevent shifting and movement, including relative motion between the objects, under conditions normally incident to transportation.

385 Notwithstanding the provisions of § 177.834(l) of this subchapter, cargo heaters may be used when weather conditions are such that the freezing of a wetted explosive material is likely. Shipments must be made by private, leased or contract carrier vehicles under exclusive use of the offeror. Cargo heaters must be reverse refrigeration (heat pump) units. Shipments made in accordance with this Special provision are excepted from the requirements of § 173.60(b)(4) of this subchapter.

(3) * * *

* * * * *

B130 When transported by highway, used diatomaceous earth filter material is not subject to any other provisions of this subchapter except for the shipping paper requirements of subpart C of part 172 of this subchapter; emergency response information as required by § 172.602(a)(2) through (a)(7) of this subchapter; and the marking requirements of § 172.302(a) of this subchapter, if the following requirements are met:

(a) Packagings are non-DOT specification sift-proof motor vehicles or sift-proof roll-on/roll-off bulk bins, which are covered by a tarpaulin or other equivalent means.

(b) The temperature of the material at the time it is offered for transport and during transportation may not exceed 55 °C (130 °F).

(c) The time between offering the material for transportation at the point of origin, and unloading the material at the destination does not exceed 48 hours.

(d) In addition to the training requirements specified by §§ 172.700 through 172.704, each driver of a vehicle transporting hazardous materials must be trained regarding the properties and hazards of diatomaceous earth filter material, precautions to ensure safe transport of the material, and actions to be taken in the event of an emergency during transportation, or a substantial delay in transit, and

(5) * * *

* * * * *

N95 Non-bulk packagings containing UN1075, Liquefied petroleum gas and UN1978, Propane are authorized to be transported in DOT 4BA240 cylinders and are not required to be marked with the UN number and proper shipping name or bear hazard labels provided:

a. The cylinder must be transported in a closed motor vehicle with the FLAMMABLE GAS placards.

b. Shipping papers must reflect a correct current accounting of all cylinders both full and expended.

c. The cylinders are collected and transported by a private or a contract carrier for reconditioning, reuse or disposal.

d. Cylinders must be secured in the vehicle in accordance with § 177.834(a).

(9) * * *

* * * * *

W11 Notwithstanding the requirements of § 172.800 and § 176.83(d), entries assigned this special provision, when offered for transportation by water, may be offered in the same transport unit with foodstuffs and cargo of an organic nature provided a distance of 3 m (10 ft) is maintained between the hazardous materials and foodstuffs or cargo of an organic nature. Class 8 (corrosive) materials assigned this special provision may also be stowed above packages of flammable liquids also assigned this special provision.

* * * * *

■ 7. In 172.202 paragraph (c)(1) is added to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

* * * * *

(c) * * *

(1) During local collections operations, hazardous materials and hazardous substances transported by highway that are ''household wastes'' as described in 40 CFR 261.4 and not subject to the Environmental Protection Agency's hazardous waste regulations in 40 CFR, Parts 262 and 263 are excepted from the requirements of this paragraph.

* * * * *

■ 8. In 172.315 paragraph (a)(3) is added to read as follows:

§ 172.315 Limited quantities.

(a) * * *

(3) Except for, Classes 1, and 7, and Division 6.1 and 6.2 materials, for transportation by highway by private carrier, the limited quantity marking is not required to be displayed on a package containing materials assigned to Packing Groups II and III prepared in accordance with the limited quantity requirements in part 173 of this subchapter provided:

(i) Inner packagings for liquid hazardous materials do not exceed 1.0 L (0.3 gallons) net capacity each;

(ii) Inner packagings for solid hazardous materials do not exceed 1.0 kg (2.2 pounds) net capacity each;

(iii) No more than 2 L (0.6 gallons) or 2 kg (4.4 pounds) aggregate net quantity of any one hazardous material may be transported in one vehicle; and

(iv) The maximum gross weight of the packages must not exceed 60 kg (132 pounds) per vehicle.

(v) Each package is marked with the name and address of the offeror, a 24-

hour emergency response phone number and the statement ''Contains Chemicals'' in letters at least one-inch high on a contrasting background.

* * * * *

■ 9. In § 172.400a, paragraph (a)(1) is revised and paragraph (a)(8) is added to read as follows:

§ 172.400a Exceptions from labeling.

(a) * * *

(1) A Dewar flask meeting the requirements in § 173.320 of this subchapter or a cylinder containing a Division 2.1, 2.2, or 2.3 material that is durably and legibly marked in accordance with CGA C–7, Appendix A (IBR; see § 171.7 of this subchapter).

* * * * *

(8) Toy plastic or paper caps for toy pistols described as ''UN0349, Articles, explosive, n.o.s. (Toy caps), 1.4S, PG II'' or ''NA0337, Toy caps, 1.4S, PG II'' offered for transportation by motor vehicle, rail freight, cargo vessel, and cargo aircraft in conformance with the following conditions:

(i) The toy plastic or paper caps must be in the form of sheets, strips, rolls, or individual caps;

(ii) The caps must not contain more than an average of twenty-five hundredths of a grain of explosive composition per cap;

(iii) The caps must be packed inside packagings constructed of cardboard not less than 0.013-inch in thickness, metal not less than 0.008-inch in thickness, non-combustible plastic not less than 0.015-inch in thickness, or a composite blister package consisting of cardboard not less than 0.013-inch in thickness and non-combustible plastic not less than 0.005-inch in thickness that completely encloses the caps;

(iv) The minimum dimensions of each side and each end of the cardboard packaging must be 1/8th inch in height or more;

(v) The number of caps inside each packaging must be limited so that not more than 10 grains of explosives composition may be packed into one cubic inch of space, and not more than 17.5 grains of the explosive composition of toy caps may be packed in any inner packaging;

(vi) Inner packagings must be packed in outer packagings meeting PG II performance criteria;

(vii) Toy caps may be packed with non-explosive or non-flammable articles provided the outer packagings are marked as prescribed in this paragraph;

(viii) Toy paper caps of any kind must not be packed in the same packaging with fireworks;

(ix) The outside of each package must be plainly marked ''ARTICLES, EXPLOSIVES, N.O.S. (TOY CAPS)—HANDLE CAREFULLY'' OR ''TOY CAPS—HANDLE CAREFULLY''; and

(x) Explosives shipped in conformance with this paragraph must have been examined in conformance with § 173.56 and approved by the Associate Administrator for Hazardous Materials Safety.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 10. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 11. In § 173.12, add paragraph (h) to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(h) *Shrink-wrapped pallets of limited quantity waste.* Shrink-wrapped pallets containing boxes of waste ORM–D or limited quantity materials may be transported by motor vehicle and cargo vessel when marked with the word ''WASTE'' on the outside of the pallet instead of on each individual box under the following conditions:

(1) Expired consumer commodities must be in their original undamaged packaging and marked with the ''Consumer Commodity ORM–D'' marking or ''Limited Quantities Ltd-Qty'' marking,

(2) Packages must be securely affixed to a pallet and shrink wrapped,

(3) The outside of the shrink wrap must be marked on opposite sides with: ''Waste Consumer Commodity ORM–D'' or ''Waste Limited Quantities Ltd-Qty,'' and

(4) A packaging or shipping paper that is permanently marked with a special permit number, ''DOT–SP'' or ''DOT–E,'' for which the provisions of the special permit have been adopted into this subchapter may continue to be used for the life of the packaging without obliterating or otherwise removing the permanent marking.

* * * * *

■ 12. In § 173.29, paragraph (f) is revised to read as follows:

§ 173.29 Empty packagings.

* * * * *

(f) Smokeless powder residue when transported by motor vehicle or railcar in COFC or TOFC service is excepted from shipping papers and the placarding requirements of subpart F of part 172 of this subchapter when transported in conformance with the following:

(1) The outer packaging is a UN specification 1G fiber drum or 1A2 steel drum;

(2) The amount of smokeless powder per outer packaging does not exceed 5 grams;

(3) The smokeless powder is approved in conformance with § 173.56 as a Class 1 explosive substance;

(4) Empty packages must be in a closed transport vehicle;

(5) Empty packages must be loaded by the shipper and unloaded by the shipper or consignee; and

(6) The proper shipping description of the material is ''RESIDUE: Last Contained Powder, smokeless, Hazard Class N/A, Identification Number N/A, Packing Group N/A''.

* * * * *

■ 13. In § 173.40, revise paragraph (d) as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

* * * * *

(d) * * *

(1) * * *

(ii) Each cylinder with a valve must be equipped with a protective metal or plastic cap, other valve protection device, or an overpack which is sufficient to protect the valve from breakage or leakage resulting from a drop of 2.0 m (7 ft) onto a non-yielding surface, such as concrete or steel. Impact must be at an orientation most likely to cause damage.

■ 14. In § 173.62, Packing Instruction 139 in the Table of Packing Methods, paragraph (c)(5) is revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * *

(c) * * *

(5) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
* * *	*	* *	*
139 ..... PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. For UN0065, 0102, 0104, 0289 and 0290, the ends of the detonating cord must be sealed, for example, by a plug firmly fixed so that the explosive cannot escape. The ends of CORD DETONATING flexible must be fastened securely. 2. For UN0065, 0104, 0289, 0290 the ends of the detonating cord are not required to be sealed provided the inner packaging containing the detonating cord consists of a static-resistant plastic bag of at least 3 mil thickness and the bag is securely closed. 3. For UN0065 and UN0289, inner packagings are not required when they are fastened securely in coils.	Bags ..... *	Not necessary ..... *	Boxes. *
* * *	*	* *	*

* * * * *

■ 15. In § 173.63, paragraph (a) is revised to read as follows:

§ 173.63 Packaging exceptions.

(a) *Charges, and detonating cords and fuses.* The following approved explosive articles may be reclassed as certain Division 1.4 Compatibility Group D (1.4D) explosives when prepared and offered for transportation under the following conditions:

(1) Cord, detonating (UN0065, Div. 1.1D), having an explosive content not exceeding 6.5 g (0.23 ounces) per 30 centimeter length (one linear foot) may be reclassed as Cord, detonating (UN0289, Div. 1.4D) and offered for transportation domestically if the aggregate gross weight of all packages containing Cord, detonating (UN0065) does not exceed 45 kg (99 pounds) per:

(i) Transport vehicle, freight container, or cargo-only aircraft;

(ii) Off-shore down-hole tool pallet carried on an off-shore supply vessel;

(iii) Cargo compartment of a cargo vessel; or

(iv) Passenger-carrying aircraft used to transport personnel to remote work sites, such as offshore drilling units.

(2) Cord, detonating, *or* Fuse detonating, *metal clad* (UN 0290, Div. 1.1D) may be renamed and reclassed as Cord, detonating, mild effect, *or* Fuse, detonating, mild effect, *metal clad* (UN 0104, Div. 1.4D); and Charges, shaped, flexible, linear (UN 0288, Div. 1.1D) may be renamed and reclassed ''Charges, shaped, flexible, linear (UN 0237, Div. 1.4D) and transported by motor vehicle, railcar, cargo vessel, and cargo aircraft, under the following conditions:

(i) The explosive substances in each item must not exceed 10.7 grams per meter (50 grains per foot) and the length of each cord, fuse, and charge must not exceed 30.5 meters (100 foot) in any one package;

(ii) ''Cord, detonating, mild effect,'' must be packaged in conformance with § 173.62(c), Packing Instruction 139; and

(iii) ''Charges, shaped, flexible, linear,'' must be packaged in conformance with § 173.62, Packing Instruction 138.

* * * * *

■ 16. In § 173.150, add paragraph (h) to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(h) Diesel fuel (NA1993) and Gasoline (UN1203) may be transported one way, by motor vehicle, directly from the loading location to an equipment repair facility, in a non-DOT specification, non-bulk packaging, known as a gasoline dispenser, which has been removed from service at gasoline marketing outlets, without complying with the marking set forth in § 172.301(c), under the following conditions:

(i) Prior to loading, each dispenser must be prepared for transportation by capping or plugging all product inlet and outlet piping, so that no fluid may be released during transportation;

(ii) No dispenser may contain more than 2 gallons of gasoline; and

(iii) Each dispenser must be blocked, braced or strapped to the motor vehicle to prevent movement during transportation.

* * * * *

■ 17. In § 173.151, add paragraphs (e), (f), (g), and (h) to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(e) Except for transportation by aircraft, Lithium (UN1415), Potassium (UN2257), and Sodium (UN1428) with a net quantity of material per inner packaging not exceeding 25 grams, are excepted from the labeling requirements of Part 172, Subpart E and the placarding requirements of Part 172 Subpart F, when offered for transportation or transported in the following packagings under the following conditions:

(1) Packaging.

(i) The hazardous material is placed in a tightly closed plastic bottle after being submerged in mineral oil;

(ii) The plastic bottle is placed inside a plastic bag which must be securely closed to prevent leaks or punctures in conformance with the instructions provided by the packaging manufacturer in accordance with § 178.2(c) of this subchapter.

(iii) The bagged bottle is then placed inside a metal can with all void spaces filled with an oil-absorbing material and sealed tight; and

(iv) The can is then placed into a heat sealed barrier bag.

(2) Marking. Each inner plastic bottle, outer metal can, and barrier bag must be marked with: (A) chemical name; (B) quantity; and (C) the name and address of the offeror.

(3) Recordkeeping. (i) Records of the preparation, packaging, and marking of each chemical must be documented and all components in each package must be noted; and

(ii) Records must be retained for a minimum of 5 years and be accessible at or through the shipper's principal place of business and be made available, upon request, to the Associate Administrator or designated official.

(f) Except for transportation by aircraft, Self-heating solid, inorganic, n.o.s. (UN3190) may by contained in:

(1) Unlined, non-DOT specification multi-wall paper bags containing a maximum of 55 pounds (net) of product as follows.

(A) Each bag must be capable of passing the tests at the Packing Group II performance level specified in Subpart M of 49 CFR part 178 for paper bags;

(B) All bags must be held a minimum of 24 hours after packaging and a determination made that the material temperature does not exceed 100 °F prior to offering for shipment; and

(C) Shipments must be made in closed freight containers.

(g) Except for transportation by aircraft, Water reactive solid, n.o.s. (contains magnesium, magnesium nitrides) in Packing Group II or III may be contained in sift-proof bulk packagings that prevent liquid water from reaching the hazardous material with sufficient venting to preclude dangerous accumulation of flammable, corrosive or toxic gaseous emissions such as methane, hydrogen and ammonia.

(h) Phosphorus, yellow, under water (UN1381) may be contained in the following packaging, subject to the following conditions:

(1) Packaging. (i) A 30 gallon UN 1A2 steel drum certified to the PG I performance level for solids and the PG I or PG II performance level for liquids and dual marked as a UN1A2/X400/S (for solid) and UN1A2 X(or Y)/1.4/150 (for liquids).

(ii) Sufficient water must be present in each drum to ensure that the phosphorous is covered during transportation, in any orientation of the drum;

(iii) Drums must be held and observed for a minimum of 24-hours before transportation. Any leaking or otherwise unsuitable drums must be replaced prior to transportation;

(iv) Packages must be destroyed and may not be reused; and

(v) The net mass of the material and water, in kilograms, must not exceed the mass that would be permitted by calculating the volume of the packaging in liters multiplied by the specific gravity indicated on the package certification.

(2) Conditions.

(i) Transportation is by private or contract motor carrier only;

(ii) Transportation is authorized from the generator site(s) of the material to a facility where it must be unloaded by the consignee for reprocessing;

■ 18. In § 173.154, add paragraphs (b)(3), (e) and (f) to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

* * * * *

(b) * * *

(3) When transported by private motor carrier only, the following materials may be packaged in polyethylene bottles with a capacity no greater than 3.785L (one gallon), packed inside an open-top, heavy wall, high density polyethylene box (*i.e.,* crate) in a manner that the polyethylene bottles are not subjected to any superimposed weight, and the boxes must be reasonably secured against movement within the transport vehicle and loaded so as to minimize the possibility of coming in contact with other lading:

Compounds, cleaning liquid (consisting of solutions containing potassium hydroxide, hydrochloric acid or phosphoric acid), NA1760, PG II or III;

Corrosive liquid, basic, inorganic, n.o.s. (Potassium hydroxide), PG II, and Corrosive liquid, basic, inorganic, n.o.s. (Sodium hydroxide), PG II, UN3266;

Corrosive liquid, acidic, inorganic, n.o.s. (Phosphoric acid and Nitric acid), UN3264, PG II;

Corrosive liquid, acidic, organic, n.o.s. (Glycolic acid), UN 3265, PG III; Hypochlorite solutions, UN1791, PG III;

Hydrochloric acid solution (with not over 32% strength), UN 1789, PG II; and

Sulfuric acid (with not more than 51% acid), UN2796, PG II.

(i) No more than four bottles, securely closed with threaded caps, may be packed in each box.

(ii) Each empty bottle must have a minimum weight of not less than 140 grams and a minimum wall thickness of not less than 0.020 inch (0.508 mm).

(iii) The completed package must meet the Packing Group II performance level, as applicable for combination packagings with a plastic box outer packaging, in accordance with Subpart M of Part 178.

(A) Tests must be performed on each type and size of bottle, for each manufacturing location. Samples taken at random must withstand the prescribed tests without breakage or leakage.

(B) One bottle for every two hours of production, or for every 2500 bottles produced, must be tested by dropping a bottle filled to 98% capacity with water from a height of 1.2 meters (3.9 feet) onto solid concrete directly on the closure.

(C) A copy of the test results must be kept on file at each facility where packagings are offered for transportation, and must be made available to a representative of the Department of Transportation upon request.

(iv) The name or symbol of the bottle producer, and the month and year of manufacture, must be marked by embossing, ink-jet printing of permanent ink, or other permanent means on the face or bottom of each bottle, in letters and numbers at least 6 mm (0.2 inch) high. Symbols, if used, must be registered with the Associate Administrator.

(v) The box must be constructed from high density polyethylene in the density range 0.950–0.962, and be capable of holding liquid when in the upright position.

* * * * *

(e) Hydrochloric acid concentration not exceed 38%, in Packing Group II, may be contained in UN31H1 or UN31HH1 intermediate bulk containers when loaded in accordance with the requirements of § 173.35(h).

(f) Battery fluid, acid, packaged with a dry storage battery in Packing Group II, may be packaged in a UN6HG2 composite packaging containing battery fluid and a dry storage battery packed in a UN4G fiberboard box. The UN6HG2 composite packaging must have a maximum capacity of 8.0 liters and be marked as meeting the requirement for Packaging Group II. The maximum allowable gross weight for the completed package is 37.0 kg.

■ 19. In § 173.156, add paragraphs (c) and (d) to read as follows:

§ 173.156 Exceptions for limited quantity and ORM.

* * * * *

(c) *Display packs.* Display packs, as defined in § 171.8 of this subchapter, of consumer commodity packages that exceed 30 kg gross weight may be transported by railcar in trailer-on-flatcar (TOFC) or container-on-flat-car (COFC) service, or roadrailer and/or railrunner trailers or by motor vehicle, or cargo vessel only under the following conditions:

(1) Packaging. Combination packages must conform to the packaging requirements of Subpart B of 49 CFR part 173 and meet the following limitations:

(i) The inner containers must conform to the quantity limits for inner packagings prescribed in §§ 173.150(b), 173.152(b), 173.154(b), 173.155(b) and 173.306(a) and (b), as appropriate;

(ii) The inner containers must be packed into trays to secure individual containers from movement inside the completed combination package during transportation;

(iii) The tray(s) must be placed into a fiberboard box, and the fiberboard box

must be banded and secured to a pallet by metal, fabric, or plastic straps to form a single palletized unit; and

(iv) The maximum net quantity of hazardous material permitted on one palletized unit is 550 kg (1,210 lbs.).

(2) *Marking.* The outside of each package must be plainly and durably marked with either ''Consumer commodity, ORM–D'' or ''Limited Quantities, Ltd-Qty,'' so that both labels will not be displayed at the same time in the surrounding rectangle as prescribed in §§ 172.315 and 172.316.

(d) *Exceptions for waste limited quantities and ORM–D materials.* Certain exceptions for waste limited quantity and ORM–D materials are prescribed in § 173.12(h).

■ 20. In § 173.158, add paragraphs (i) and (j) to read as follows:

§ 173.158 Nitric acid.

* * * * *

(i) Nitric acid of up to 40% concentration, when offered for transportation or transported by rail, highway, or cargo vessel, may be contained in a UN1H1 non-removable head plastic drum, tested and marked at the PGII level for liquids with a specific gravity of at least 1.8, and a hydrostatic test pressure appropriate for the hazardous material.

(1) Drums may only be used one time and must be destroyed after emptying.

(2) Drums must be permanently and legibly marked ''Single Trip Only'' and ''Must be Destroyed When Empty.''

(j) Nitric acid, other than red fuming, with more than 70% nitric acid and Nitric acid, other than red fuming, with not more than 70% nitric acid, when offered for transportation or transported by rail, highway, or cargo vessel, may be packaged in a UN 4G performance standard packaging meeting the Packing Group I or II performance level:

(1) Inner packaging: A plastic (''fluorinated ethylene-propylene'' [FEP] polymers, ''perfluoroalkoxy'' [PFA] polymers or similar materials) bottle with lined screw closure meeting the compatibility requirements of § 173.24(e) of this section and having a net capacity not greater than 2.5 liters (0.66 gallon) each. The wall thickness of the bottle must not be less than 0.020''.

(2) Intermediate packaging: (A) A tightly closed rigid-foam plastic receptacle each containing one inner packaging; or

(B) A plastic bag containing one inner packaging and placed inside a heavy-wall polypropylene bag lined with polypropylene absorbent material of sufficient capacity to completely absorb the liquid contents of each inner package. Both bags must be tightly sealed with either plastic tape, a wire tie or a cable tie.

■ 21. In § 173.159, revise the first sentence in introductory paragraph (e) and add paragraph (j) to read as follows:

§ 173.159 Batteries, wet.

* * * * *

(e) When transported by highway or rail, shipments of electric storage batteries containing electrolyte or corrosive battery fluid, and shipments of electric storage batteries and battery acid, are not subject to any other requirements of this subchapter, if all of the following are met: * * *

* * * * *

(j) *Nickel cadmium batteries containing liquid potassium hydroxide.* Nickel-cadmium batteries that each contain no more than 10 ml of liquid potassium hydroxide, a Class 8 material, are not subject to the requirements of this subchapter when transported by motor vehicle, railcar, cargo vessel, and passenger and cargo aircraft under the following conditions:

(1) Each battery must be sealed in a heat sealed bag, packaged to prevent short circuits, and placed in the center of an outer plastic drum and surrounded with a foam-in-place packaging material;

(2) The outer plastic drum must meet the UN 1H2 performance standard at the Packing Group II level;

(3) The gross weight of the package may not exceed 15.2 kg (33.4 pounds); and

(4) The cumulative amount of potassium hydroxide solution in all of the batteries in each package may not exceed 4 ounces (0.11 kg).

■ 22. In § 173.168, add paragraph (g) to read as follows:

§ 173.168 Chemical oxygen generators.

* * * * *

(g) *Exceptions.* An unapproved chemical oxygen generator with only one positive means of preventing unintentional actuation of the generator, and without the required approval number marked on the outside of the package, may be transported by motor vehicle, railcar, and cargo vessel only under the following conditions:

(1) *Packaging.* (i) The one positive means of preventing unintentional actuation of the generator shall be installed in such a manner that the percussion primer is so completely protected from its firing pin that it cannot be physically actuated or the electric firing circuit is so completely isolated from the electric match that it cannot be electrically actuated.

(ii) *Inner packaging.* Except as provided in paragraph (g)(1)(iii) of this section below, an unapproved chemical oxygen generator, or unapproved chemical oxygen generator installed in smaller size equipment such as a PBE shall be packaged in a combination packaging consisting of a non-combustible inner packaging that fully encloses the oxygen generator or piece of equipment inside an outer packaging which meets the requirements in § 173.212 or ''Packaging for Airline Supplies—ATA Specification No. 300,'' published by the Airlines for America.

(iii) *Impractical size packaging.* If the piece of equipment in which the unapproved chemical oxygen generator is installed is so large (*e.g.,* an aircraft seat) as to not be practically able to be fully enclosed in the packaging prescribed in paragraphs (g)(1)(ii) of this section, then a visible and durable warning tag must be securely attached to the piece of equipment stating ''THIS ITEM CONTAINS A CHEMICAL OXYGEN GENERATOR.''

(2) *Testing.* Each unapproved chemical oxygen generator, without its packaging, must be capable of withstanding a 1.8 meter drop onto a rigid, non-resilient, flat and horizontal surface, in the position most likely to cause damage, with no actuation or loss of contents.

(3) Marking. (i) If the unapproved chemical oxygen generator is inside a piece of equipment which is sealed or difficult to determine if an oxygen generator is present, for example—a closed sealed passenger service unit, then a visible and durable warning sign must be attached to the piece of equipment stating: ''THIS ITEM CONTAINS A CHEMICAL OXYGEN GENERATOR''; and

(ii) Each outer package, and overpack if used, must be visibly and durably marked with the following statement: ''THIS PACKAGE IS NOT AUTHORIZED FOR TRANSPORTATION ABOARD AIRCRAFT''.

■ 23. In § 173.181, revise introductory paragraph (a) and add paragraph (d) to read as follows:

§ 173.181 Pyrophoric materials (liquids).

* * * * *

(a) Specification steel or nickel cylinders prescribed for any compressed gas except acetylene having a minimum design pressure of 1206 kPa (175 psig). DOT 3AL cylinders with a minimum marked service pressure of 1,800 psig and a maximum water capacity of 49 liters (13 gal) are authorized only for UN3194, Pyrophoric liquid, inorganic, n.o.s. Any preheating or heating of the DOT 3AL cylinders must be limited to a maximum temperature of 79.4 °C

(175 °F). Cylinders with valves must be:
* * *

* * * * *

(d) *Packaging*—A combination packaging consisting of the following:

(1) Outer packaging. A 208 liter capacity UN1A2 drum that has been certified to PG I. The drum has a minimum wall thickness of 1.0 mm and the top head is closed with a steel closing ring with a minimum thickness of 2.4 mm.

(2) Inner packaging. A 10 liter or 20 liter UN1A1 drum which has been certified to PG I. The drums have a minimum wall thickness of 1.9 mm. Both drums have 4 NPT or VCR openings, each with a diameter of 6.3 mm. The 10 liter or 20 liter drum must be fabricated from stainless steel. On the upper head, both the 10 and 20 liter drums are fitted with a center opening with a maximum diameter of 68.3 mm. The opening is sealed with a threaded closure fabricated from 316 stainless steel. No more than two (2) inner drums may be placed inside the outer drum.

■ 24. In § 173.184, add paragraph (c) to read as follows:

§ 173.184 Highway or rail fusees.

* * * * *

(c) For transportation by highway, railroad flagging kits are not subject any other requirements of this subchapter when all of the following conditions are met:

(1) The flagging kits may only contain fusees and railroad torpedoes as follows:

(i) Fusee (rail or highway) (NA1325, Division 4.1, PG II).

(ii) Articles, pyrotechnic (UN0431, Division 1.4G, PG II).

(iii) Signal devices, hand (UN0373, Division 1.4S, PG II).

(iv) Signal devices, hand (UN0191, Division 1.4G, PG II).

(v) Signals, railway track, explosive (UN0193, Division 1.4S, PG II).

(2) Fusees and railroad torpedoes must be transported in compartmented metal containers. Each compartment must have a cover with a latching device. Compartments for railroad torpedoes must be equipped with a spring loaded positive locking device. Each compartment may only contain one type of device.

(3) Each flagging kit may contain a maximum of 36 fusees and 36 railroad torpedoes. No more than 6 flagging kits may be transported at one time on any motor vehicle.

(4) Flagging kits may only be transported on railroad motor vehicles including privately owned motor vehicles under the direct control of on-duty railroad employees.

(5) The fusees and railroad torpedoes must be kept in the closed flagging kits whenever they are not being used on the railroad right-of-way, while the motor vehicle is being driven, or whenever the motor vehicle is located on other than railroad property.

(6) When left in unattended motor vehicles on non-railroad property, a flagging kit must be locked, locked inside the motor vehicle, or stored in a locked compartment on the motor vehicle.

■ 25. In § 173.193, revise paragraph (b) to read as follows:

§ 173.193 Bromoacetone, methyl bromide, chloropicrin and methyl bromide or methyl chloride mixtures, etc.

* * * * *

(b) Bromoacetone, methyl bromide, chloropicrin and methyl bromide mixtures, chloropicrin and methyl chloride mixtures, and chloropicrin mixtures charged with non-flammable, non-liquefied compressed gas must be packed in Specification 3A, 3AA, 3B, 3C, 3E, 4A, 4B, 4BA, 4BW, or 4C cylinders having not over 113 kg (250 pounds) water capacity (nominal) except:

(1) DOT specification 4BW cylinders containing chloropicrin and methyl bromide mixtures may not exceed 453 kg (1000 pounds). This capacity limit does not apply to shipments of methyl bromide; and

(2) water capacity (nominal).

* * * * *

■ 26. In § 173.226, add paragraph (f) to read as follows:

§ 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A.

* * * * *

(f) Liquid hazardous materials in Division 6.1 Packing Group I, Hazard Zone A are excepted from the segregation requirements of §§ 174.81, 176.83, and 177.848(d) of this subchapter when packaged as follows:

(1) *Inner packaging system.* The inner packaging system must consist of three packagings: (i): A glass, plastic or metal receptacle, with a capacity of not more than 1 liter (1 quart), securely cushioned with a non-reactive, absorbent material. The receptacle must have a closure which is held in place by any means capable of preventing back-off or loosening of the closure by impact or vibration during transportation.

(ii) The receptacle must be packed within a leak-tight packaging of metal, with a capacity of not less than 4 liters (1 gallon); and

(iii) The metal packaging must be securely cushioned with a nonreactive absorbent material and packed in a leak-tight UN 1A2 steel drum or UN 1H2 plastic drum, with a capacity of not less than 19 liters (5 gallons).

(2) *Outer packaging.* The inner packaging system must be placed in a UN 1A2 steel drum or UN 1H2 plastic drum, with a capacity of not less than 114 liters (30 gallons). The inner packaging system must be securely cushioned with a non-reactive, absorbent material. The total amount of liquid contained in the outer packaging may not exceed 1 liter (1 quart).

(3) Both the inner packaging system and the outer packaging must conform to the performance test requirements of Subpart M of part 178 of this subchapter at the Packing Group I performance level. The inner packaging system must meet these tests without benefit of the outer packaging.

* * * * *

■ 27. In § 173.301, revise paragraphs (f)(1) through (2), (h)(2)(i), and add paragraph (f)(7) to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(f) Pressure relief device systems. (1) Except as provided in paragraphs (f)(5) through (f)(7) or (j) of this section, a cylinder filled with a gas and offered for transportation must be equipped with one or more pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with CGA Pamphlet S–1.1 (compliance with paragraph 9.1.1.1 is not required) and CGA Pamphlet S–7. The pressure relief device must be capable of preventing rupture of the normally filled cylinder when subjected to a fire test conducted in accordance with CGA Pamphlet C–14 (IBR, see § 171.7 of this subchapter), or, in the case of an acetylene cylinder, CGA Pamphlet C–12 (IBR, see § 171.7 of this subchapter).

(2) A pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas) material. This provision does not apply to DOT-specification 39 cylinders of 1.2L (75 cubic inches) or less in volume filled with a liquefied petroleum gas, methyl acetylene and propadiene mixtures, stabilized, propylene, propane or butane.

* * * * *

(7) A pressure relief device is not required on a DOT Specification 3E cylinder measuring up to 50mm (2 inches) in diameter by 305mm (12

inches) in length for the following gases in the maximum weight limits specified:

(i) Carbon Dioxide 0.24L (8 oz. limit)

(ii) Ethane 0.12L (4 oz. limit)

(iii) Ethylene 0.12L (4 oz. limit)

(iv) Hydrogen Chloride, anhydrous 0.24L (8 oz. limit)

(v) Monochlorotrifluoromethane 0.35L (12 oz. limit)

(vi) Nitrous oxide, 0.24L (8 oz. limit)

(vii) Vinyl fluoride, stabilized 0.24L (8 oz. limit)

* * * * *

(h) * * *

(2) * * *

(i) By equipping the cylinder with securely attached metal or plastic caps of sufficient strength to protect valves from damage during transportation;

* * * * *

■ 28. In § 173.302, revise paragraph (f)(1) to read as follows:

§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases or adsorbed gases.

* * * * *

(f) * * *

(1) Only DOT specification 3A, 3AA, 3AL, 3E, 3HT, 39 cylinders, 4E (filled to less than 200 psig at 21 °C (70 °F), and UN pressure receptacles ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders are authorized.

* * * * *

■ 29. In § 173.302a:

■ a. Revise paragraphs (a)(1) and (a)(5);

■ b. Add a new paragraph (a)(6);

■ c. Redesignate paragraphs (c), (d) and (e) as paragraphs (d), (e), and (f); and

■ d. Add new paragraph (c).

The revisions and additons are to read as follows:

§ 173.302a Additional requirements for shipment of nonliquefied (permanent) compressed gases in specification cylinders.

(a) * * *

(1) DOT 3, 3A, 3AA, 3AL, 3B, 3E, 4B, 4BA, 4BW, and 4E cylinders.

* * * * *

(5) Aluminum cylinders manufactured in conformance with specifications DOT 39, 3AL and 4E are authorized for oxygen only under the conditions specified in § 173.302(b).

(6) DOT 4E cylinders- DOT 4E cylinders with a maximum capacity of 43L (11 gal) must have a minimum rating of 240 psig and be filled to no more than 200 psig at 21 °C (70 °F).

* * * * *

(c) *Special filling limits for DOT 3A, 3AX, 3AA, and 3AAX cylinders containing Division 2.1 gases.* A DOT specification 3A, 3AX, 3AA, and 3AAX cylinder may be filled with hydrogen and mixtures of hydrogen with helium, argon or nitrogen, to a pressure 10% in excess of its marked service pressure, if the following requirements are met:

(1) The cylinder must confirm to all of the requirements of paragraph (b) of this section;

(2) The cylinder was manufactured after December 31, 1945;

(3) DOT specification 3A and 3AX cylinders are limited to those having an intermediate manganese composition.

(i) Cylinders manufactured with intermediate manganese steel must have been normalized, not quench and tempered. Quench and temper treatment of intermediate steel is not authorized.

(ii) Cylinders manufactured with chrome moly steel must have been normalized, not quenched and tempered, not normalized.

(4) Cylinders must be equipped with safety relief devices as follows:

(i) Cylinders less than 1.7 m (65 inches) in length must be equipped with fusible metal backed frangible disc devices;

(ii) Cylinders 1.7 m (65 inches) or greater in length and 24.5 cm (9.63 inches) in diameter or larger must be equipped with fusible metal backed frangible disc devices or frangible disc devices. Cylinders having diameter of .56 m (22 inches) or larger must be equipped with frangible disc devices.

(d) *Carbon monoxide.* Carbon monoxide must be offered in a DOT 3, 3A, 3AX, 3AA, 3AAX, 3AL, 3E, 3T or 4E cylinder having a minimum service pressure of 1800 psig. The pressure in a steel cylinder may not exceed 1000 psig at 21 °C (70 °F), except that if the gas is dry and sulfur free, the cylinder may be filled to 5/6 of the cylinder's service pressure or 2000 psig, whichever is less. A DOT 3AL cylinder may be filled to its marked service pressure. A DOT 4E cylinder must be rated at least 240 psig and be filled to no more than 200 psig at 21C (70F). A DOT 3AL or DOT 4E cylinder is authorized only when transported by motor vehicle, rail car, or cargo-only aircraft.

(e) *Diborane and diborane mixtures.* Diborane and diborane mixed with compatible compressed gas must be offered in a DOT 3AL1800 or 3AA1800 cylinder. The maximum filling density of the diborane may not exceed 7%. Diborane mixed with compatible compressed gas may not have a pressure exceeding the service pressure of the cylinder if complete decomposition of the diborane occurs. Cylinder valve assemblies must be protected in accordance with § 173.301(h).

(f) *Fluorine.* Fluorine must be shipped in specification 3A1000, 3AA1000, or 3BN400 cylinders without pressure relief devices and equipped with valve protection cap. The cylinder may not be charged to over 400 psig at 21 °C (70 °F) and may not contain over 2.7 kg (6 lbs) of gas.

■ 30. In § 173.304, revise paragraph (d) to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

* * * * *

(d) *Refrigerant and dispersant gases.* Nontoxic and nonflammable refrigerant or dispersant gases must be offered for transportation in cylinders prescribed in § 173.304a of this subchapter, or in DOT 2P, 2Q, or 2Q1 containers (§§ 178.33, 178.33a, and 178.33d—2 of this subchapter). DOT 2P, 2Q, and 2Q1 must be packaged in a strong outer packaging of such design as to protect valves from damage or accidental functioning under conditions incident to transportation. For DOT 2P and 2Q containers, the pressure inside the containers may not exceed 87 psia at 21.1°C (70 °F). For 2Q1 containers, the pressure inside the container may not exceed 200 psig at 55 °C (131 °F). Each completed metal container filled for shipment must be heated until its contents reach a minimum temperature of 55 °C (131 °F) without evidence of leakage, distortion, or other defect. Each outer package must be plainly marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS''.

* * * * *

■ 31. In § 173.304a, revise in the table in paragraph (a)(2), the entries for:

■ a. Carbon dioxide; and

■ b. Nitrous oxide.

§ 173.304a Additional requirements for shipment of liquefied compressed gases in specification cylinders.

(a) * * *

(2) For the gases named, the following requirements apply (for cryogenic liquids, see § 173.316):

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Packaging marked as shown in this column or of the same type with higher service pressure must be used, except as provided in §§ 173.301(l), 173.301a(e), and 180.205(a) (see notes following table)
* * * *	*	* * *
Carbon dioxide (see Notes 4, 7, and 8)	70.3	DOT–3A2000, DOT–3AA2000, DOT–3AX2000, DOT–3AAX2000, DOT–3T2000.
Carbon dioxide (see Notes 4, 7, and 8)	73.2	DOT–3A2265, DOT–3AA2265, DOT–3AX2265, DOT–3AAX2265, DOT–3T2265.
Carbon dioxide (see Notes 4, 7, and 8)	74.5	DOT–3A2400, DOT–3AA2400, DOT–3AX2400, DOT–3AAX2400, DOT–3T2400.
* * * *	*	* * *
Nitrous oxide (*see* Notes 7, 8, and 11)	70.3	DOT–3A2000, DOT–3AA2000, DOT–3AX2000, DOT–3AAX2000, DOT–3T2000.
Nitrous oxide (*see* Notes 7, 8, and 11)	73.2	DOT–3A2265, DOT–3AA2265, DOT–3AX2265, DOT–3AAX2265, DOT–3T2265.
Nitrous oxide (*see* Notes 7, 8, and 11)	74.5	DOT–3A2400, DOT–3AA2400, DOT–3AX2400, DOT–3AAX2400, DOT–3T2400.
* * * *	*	* * *

* * * * *

■ 32. In § 173.306:
■ a. Revise paragraph (a) and (b);
■ b. Add paragraph (e)(2) and (m); and
■ c. Revise paragraphs (f) and (k).

The revisions and additions read as follows:

§ 173.306 Limited quantities of compressed gases.

(a) Limited quantities of compressed gases for which exceptions are permitted as noted by reference to this section in § 172.101 of this subchapter are excepted from labeling, except when offered for transportation or transported by air, and, unless required as a condition of the exception, specification packaging requirements of this subchapter when packaged in accordance with the following paragraphs. For transportation by aircraft, the package must conform to the applicable requirements of § 173.27 of this subchapter and only packages of hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments are not subject to subpart F (Placarding) of part 172 of this subchapter, to part 174 of this subchapter except § 174.24, and to part 177 of this subchapter except § 177.817. Each package may not exceed 30 kg (66 lbs.) gross weight.

(1) When in containers of not more than 4 fluid ounces capacity (7.22 cubic inches or less) except cigarette lighters. Additional exceptions for certain compressed gases in limited quantities and the ORM–D hazard class are provided in paragraph (i) of this section.

(2) When in refillable metal containers filled with a material that is not classed as a hazardous material to not more than 90% of capacity at 21.1 °C (70 °F) and then charged with nonflammable, nonliquefied gas. Each container must be tested to three times the pressure at 21.1 °C (70 °F) and, when refilled, be retested to three times the pressure of the gas at 21.1 °C (70 °F). Also, one of the following conditions must be met:

(i) The container is not over 0.95 L (1 quart) capacity and charged to not more than 170 psig (1172.1 kPa) at 21.1 °C (70 °F), and must be packed in a strong outer packaging; or

(ii) The container is not over 114 L (30 gallons) capacity and charged to not more than 75 psig (517.1 kPa) at 21.1 °C (70 °F).

(3) When in a metal aerosol (see § 171.8 of this subchapter for a definition of *aerosol*) container of a non-DOT specification, a DOT 2P, a DOT 2Q, or a variation of a 2P or 2Q design, provided all of the following conditions are met. Additional exceptions for material in packaging conforming to this paragraph (a)(3) are provided in paragraph (i) of this section.

(i) *Capacity.* The capacity of the container must not exceed 1 L (61.0 cubic inches).

(ii) *General pressure conditions.* The authorized metal aerosol containers and associated pressure limits are provided in the following table. The pressure in the container must not exceed 180 psig at 55 °C (131 °F) except as may be authorized for variations of a DOT specification container type. In any event, the metal container must be capable of withstanding without bursting a pressure of at least one and one-half times the equilibrium pressure of the contents at 55 °C (131 °F).

If the contents are placed in a . . .	Then, the gauge pressure (psi) at 55 °C (131 °F) must be . . .	Specification citation . . .
non-DOT specification container	Up to but not exceeding 140.	
2P	Greater than 140 but not exceeding 160	§ 178.33
2Q	Greater than 160 but not exceeding 180	§ 178.33a
If the contents are placed in a variation of a 2P or 2Q specification in a . . .	Then, the gauge pressure (psi) at 55 °C (131 °F) must be . . .	Specification citation . . .
2P1	Greater than 140 but not exceeding 160	§ 178.33c–2
2Q1	Greater than 160 but not exceeding 200	§ 178.33d–2

(iii) *Liquid fill.* The liquid content of the material and gas must not completely fill the container at 55 °C (131 °F).

(iv) *Outer packaging.* The containers must be packed in strong outer packagings.

(v) *Pressure testing.* Each container, after it is filled, must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F), or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F)). If the contents are sensitive to heat, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2,000 must be tested at the higher temperature. No leakage or permanent deformation of a container may occur. However, instead of this standard water bath test, container(s) may be tested using one of the following methods subject to certain conditions—

(A) *Alternative water bath test.* (*1*) One filled container in a lot of 2,000 must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F). If the container shows evidence of leakage or permanent deformation, the lot of 2,000 containers must be rejected;

(*2*) A second filled container in the lot of 2,000 must be weighed and compared to the weight specification for the containers as documented in the operating procedures for the weight test. Failure of the container to meet the weight specification is evidence of leakage or overfilling and the lot of 2,000 must be rejected;

(*3*) The remainder of the containers in the lot of 2,000 must be visually inspected (e.g, examination of the seams). Containers showing evidence of leakage or overfilling must not be transported; and

(*4*) Each person employing this test must maintain a copy of the operating procedures (or an electronic file thereof) that is accessible at, or through, its principal place of business and must make the procedures available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation.

(B) *Automated pressure test.* Each person employing an automated process for pressure testing of filled containers must develop procedures for implementation of the test. Each person must maintain a copy of the procedures (or an electronic file thereof) that is accessible at, or through, its principal place of business and must make the procedures available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation. The procedures must, at a minimum, include instruction on the following:

(*1*) Pressure specifications. Each person must specify pressure standard(s) (*e.g.* a pressure limit or range) for a container respective of the design and/or contents. Each container, after it is filled, must be pressure checked and compared to the standards. For a pressure limit, any container exceeding the pressure limit must be rejected. For a pressure range, any container outside of the set range must be rejected. The instruments used to determine the pressure must be properly calibrated before a production run to an accuracy of +/- or better; and

(*2*) Periodic inspection. At designated intervals, a randomly selected container must be inspected for proper closure and verification of filling pressure. If a container shows signs of improper closure or over-filling, five (5) additional randomly selected containers must be inspected. If any of the additional containers show signs of improper closure or over-filling, all containers produced since the last inspection must be rejected.

(C) *Weight test.* Each person employing a weight test of filled containers must develop procedures for implementation of the test. Each person must maintain a copy of the procedures (or an electronic file thereof) that is accessible at, or through, its principal place of business and must make the procedures available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation. The procedures must, at a minimum, include instruction on the following:

(*1*) Weight specifications. Each person must specify target weight specifications for a particular container. Each container, after it is filled, must be weighed and compared to the target weight specification for the container. Any container outside the target weight specification is an indication of leakage or overfilling and must be rejected. The instruments used to determine the weight must be properly calibrated before a testing run and be sufficiently sensitive to measure within 0.10 g of the true weight of the container;

(*2*) Heat testing and pressure limits. One container out of each lot of successfully filled containers must be heat tested by raising the internal pressure until it reaches that which would be reached at 55 °C (131 °F). The lot size should be no greater than 2,000. If the pressure in the container exceeds the maximum pressure allowed for the container type or if the container shows signs of leakage or permanent deformation, the lot must be rejected. Alternatively, five (5) additional randomly selected containers from the lot may be tested to qualify the lot but if any of the five containers fail the test, the entire lot must be rejected;

(*3*) Periodic inspection. At designated intervals, a randomly selected container must be inspected for proper closure and verification of filling pressure. If a container shows signs of improper closure or over-filling, five (5) additional randomly selected containers must be inspected. If any of the additional containers show signs of improper closure or over-filling, all containers produces since the last inspection must be rejected; and

(*4*) Visual inspection. Each container must be visually inspected prior to being packaged. Any container showing signs of leakage or permanent deformation must be rejected.

(D) *Leakage test.* (*1*) Pressure and leak testing before filling. Each empty container must be subjected to a pressure equal to or in excess of the maximum expected in the filled containers at 55 °C (131 °F) (or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F)). This must be at least two-thirds of the design pressure of the container. If any container shows evidence of leakage at a rate equal to or greater than $3.3 \times 10-2$ mbar L/s at the test pressure, distortion or other defect, it must be rejected; and

(*2*) Testing after filling. The person filling each container must ensure that the crimping equipment is set appropriately and the specified propellant is used before filling a container. Once filled, each container must be weighed and leak tested. The leak detection equipment must be sufficiently sensitive to detect at least a leak rate of $2.0 \times 10-3$ mbar L/s at 20 °C (68 °F). Any filled container which shows evidence of leakage, deformation, or overfilling must be rejected.

(vi) Each outer packaging must be marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS.''

(4) When in gas samples transported under the following conditions:

(i) A gas sample may only be transported as non-pressurized gas when its pressure corresponding to ambient atmospheric pressure in the

container is not more than 105 kPa absolute (15.22 psia).

(ii) Non-pressurized gases, toxic (or toxic and flammable) must be packed in hermetically sealed glass or metal inner packagings of not more than one L (0.3 gallons) overpacked in a strong outer packaging.

(iii) Non-pressurized gases, flammable must be packed in hermetically sealed glass or metal inner packagings of not more than 5 L (1.3 gallons) and overpacked in a strong outer packaging.

(5) For limited quantities of Division 2.2 gases with no subsidiary risk, when in a plastic aerosol (see § 171.8 of this subchapter for a definition of aerosol) container of a non-DOT specification or a DOT 2S, provided all of the following conditions are met. Additional exceptions for material in packaging conforming to this paragraph (a)(5) are provided in paragraph (i) of this section.

(i) *Capacity.* The capacity of the container must not exceed 1 L (61.0 cubic inches).

(ii) *General pressure conditions.* The authorized plastic aerosol containers and associated pressure limits are provided in the following table. The pressure in the container must not exceed 160 psig at 55 °C (131 °F) except as may be authorized for variations, if any, of a DOT specification container type. In any event, the metal container must be capable of withstanding without bursting a pressure of at least one and one-half times the equilibrium pressure of the contents at 55 °C (131 °F).

If the contents are placed in a . . .	Then, the gauge pressure (in psig) at 55 °C (131 °F) must be . . .	Specification citation . . .
non-DOT specification container	Up to but not exceeding 140	
2S	Greater than 140 but not exceeding 160	§ 178.33b

(iii) *Liquid fill.* Liquid content of the material and gas must not completely fill the container at 55 °C (131 °F).

(iv) *Outer packaging.* The containers must be packed in strong outer packagings.

(v) *Pressure testing.* Except as provided in paragraph (a)(5)(vi) of this section, each container must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F) or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). If the contents are sensitive to heat, or if the container is made of plastic material which softens at this test temperature, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2,000 must be tested at the higher temperature. No leakage or permanent deformation of a container may occur except that a plastic container may be deformed through softening provided that it does not leak.

(vi) *Leakage test.* As an alternative to the hot water bath test in paragraph (a)(5)(v) of this section, testing may be performed as follows:

(A) Pressure and leak testing before filling. Each empty container must be subjected to a pressure equal to or in excess of the maximum expected in the filled containers at 55 °C (131 °F) (or 50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F). This must be at least two-thirds of the design pressure of the container. If any container shows evidence of leakage at a rate equal to or greater than $3.3 \times 10-2$ mbar L/s at the test pressure, distortion or other defect, it must be rejected; and

(B) Testing after filling. Prior to filling, the filler must ensure that the crimping equipment is set appropriately and the specified propellant is used before filling the container. Once filled, each container must be weighed and leak tested. The leak detection equipment must be sufficiently sensitive to detect at least a leak rate of $2.0 \times 10-3$ mbar L/s at 20 °C (68 °F). Any filled container which shows evidence of leakage, deformation, or excessive weight must be rejected.

(vii) Each outer packaging must be marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS.''

(b) Exceptions for foodstuffs, soap, biologicals, electronic tubes, and audible fire alarm systems. Limited quantities of compressed gases (except Division 2.3 gases) for which exceptions are provided as indicated by reference to this section in § 172.101 of this subchapter, when in accordance with one of the following paragraphs, are excepted from labeling, except when offered for transportation or transported by aircraft, and the specification packaging requirements of this subchapter. For transportation by aircraft, the package must conform to the applicable requirements of § 173.27 of this subchapter and only packages of hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments are not subject to subpart F (Placarding) of part 172 of this subchapter, to part 174 of this subchapter, except § 174.24, and to part 177 of this subchapter, except § 177.817. Additional exceptions for certain compressed gases in limited quantities and the ORM–D hazard class are provided in paragraph (i) of this section.

(1) Foodstuffs or soaps with soluble or emulsified compressed gas are authorized in non-refillable metal or plastic containers not to exceed 1 L (61.0 cubic inches) provided the pressure does not exceed a pressure of 140 psig at 55 °C (131 °F) except as may be authorized for variations DOT of a specification container type. For pressure greater than 140 psig to 160 psig, a 2P1 or 2Q2 may be used. In no case may the pressure of the contents be greater than 150 psig at 75 °F. Plastic containers must only contain Division 2.2 non-flammable soluble or emulsified compressed gas. In any event, the metal or plastic container must be capable of withstanding, without bursting, a pressure of at least one and one-half times the equilibrium pressure of the contents at 55 °C (131 °F).

If the contents are placed in a . . .	Then, the gauge pressure (in psig) at 55 °C (131 °F) must be . . .	Specification citation . . .
non-DOT specification metal or plastic container	Up to but not exceeding 140	
If the contents are placed in a variation of a 2P or 2Q specification in a . . .	Then, the gauge pressure (in psig) at 55 °C (131 °F) must be . . .	Specification citation . . .
2P1	Greater than 140 but not exceeding 160	§ 178.33c–2

If the contents are placed in a . . .	Then, the gauge pressure (in psig) at 55 °C (131 °F) must be . . .	Specification citation . . .
2Q2	Greater than 140 but not exceeding 160	§ 178.33d–3

(i) Containers must be packed in strong outer packagings.

(ii) Liquid content of the material and the gas must not completely fill the container at 55 °C (131 °F).

(iii) Each outer packaging must be marked ''INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS.''

(2) Cream in refillable metal or plastic containers with soluble or emulsified compressed gas. Plastic containers must only contain Division 2.2 non-flammable soluble or emulsified compressed gas. Containers must be of such design that they will hold pressure without permanent deformation up to 375 psig and must be equipped with a device designed so as to release pressure without bursting of the container or dangerous projection of its parts at higher pressures. This exception applies to shipments offered for transportation by refrigerated motor vehicles only.

(3) Nonrefillable metal or plastic containers charged with a Division 6.1 Packing Group III or nonflammable solution containing biological products or a medical preparation which could be deteriorated by heat, and compressed gas or gases. Plastic containers must only contain 2.2 non-flammable soluble or emulsified compressed gas. The capacity of each container may not exceed 35 cubic inches (19.3 fluid ounces). The pressure in the container may not exceed 140 psig at 55 °C (131 °F), and the liquid content of the product and gas must not completely fill the containers at 55 °C (131 °F). One completed container out of each lot of 500 or less, filled for shipment, must be heated, until the pressure in the container is equivalent to equilibrium pressure of the contents at 55 °C (131 °F). There must be no evidence of leakage, distortion, or other defect. The container must be packed in strong outer packagings.

(4) Electronic tubes, each having a volume of not more than 30 cubic inches and charged with gas to a pressure of not more than 35 psig and packed in strong outer packagings.

(5) Audible fire alarm systems powered by a compressed gas contained in an inside metal container when shipped under the following conditions:

(i) Each inside container must have contents which are not flammable, poisonous, or corrosive as defined under this part,

(ii) Each inside container may not have a capacity exceeding 35 cubic inches (19.3 fluid ounces),

(iii) Each inside container may not have a pressure exceeding 70 psig at 21.1 °C (70 °F) and the liquid portion of the gas may not completely fill the inside container at 55 °C (131 °F), and

(iv) Each nonrefillable inside container must be designed and fabricated with a burst pressure of not less than four times its charged pressure at 55 °C (131 °F). Each refillable inside container must be designed and fabricated with a burst pressure of not less than five times its charged pressure at 55 °C (131 °F).

* * * * *

(e) * * *

(2) *Used refrigerating machines.* (i) *Packaging.* Reconditioned (used) refrigerating machines (UN 2857, Div. 2.2) may be excepted from the marking requirements of § 172.302(c) and transported by motor vehicle when they conform to the requirements prescribed in § 173.306(e)(1), are secured or permanently attached to the motor vehicle, and are:

(A) Permanently affixed to a steel base structure,

(B) Permanently affixed to a trailer, or

(C) Manufactured with a rigid internal structure designed for transportation and stacking conditions such that they do not leak and do not deteriorate, distort, or become damaged in a manner that could adversely affect their safety or reduce their strength in transportation, cause instability in stacks of refrigerating machines, or cause damage to these machines in a way that is likely to reduce safety in transportation.

(ii) *Testing.* Used refrigerating machines returned from their rental locations must be transported back to an authorized original equipment manufacturer service facility and undergo maintenance, repair and/or replacement that renders these machines back to the same operational level as that of new refrigerating machines, and must undergo a leak test by a certified technician, prior to re-shipment.

* * * * *

(f) *Accumulators (Articles, pressurized pneumatic or hydraulic containing non-flammable gas).* The following applies to accumulators, which are hydraulic accumulators containing nonliquefied, nonflammable gas, and nonflammable liquids or pneumatic accumulators containing nonliquefied, nonflammable gas, fabricated from materials which will not fragment upon rupture.

(1) Accumulators installed in motor vehicles, construction equipment, and assembled machinery and designed and fabricated with a burst pressure of not less than five times their charged pressure at 70 °F, when shipped, are not subject to the requirements of this subchapter.

(2) Accumulators charged with limited quantities of compressed gas to not more than 200 psig at 70 °F are excepted from labeling (except when offered for transportation by air) and the specification packaging requirements of this subchapter when shipped under the following conditions. In addition, shipments are not subject to subpart F of part 172 of this subchapter, to part 174 of this subchapter except § 174.24 and to part 177 of this subchapter except § 177.817.

(i) Each accumulator must be shipped as an inside packaging;

(ii) Each accumulator may not have a gas space exceeding 2,500 cubic inches under stored pressure; and

(iii) Each accumulator must be tested, without evidence of failure or damage, to at least three times its charged pressure of 70 °F, but not less than 120 psi before initial shipment and before each refilling and reshipment.

(3) Accumulators with a charging pressure exceeding 200 psig at 70 °F and in compliance with the requirements stated in paragraph (f)(2), (i), (ii), and (iii) of this section, as applicable, are excepted from labeling (except when offered for transportation by air) and the specification packaging requirements of this subchapter when shipped under the following conditions:

(i) Each accumulator must be designed and fabricated with a burst pressure of not less than five (5) times its charged pressure at 70 °F when shipped;

(ii) For an accumulator with a gas space not to exceed 100 cubic inches, it must be designed and fabricated with a burst pressure of not less than five (5) times its charged pressure at 70 °F. Out of each lot not to exceed 1,000 successively produced accumulators per day of the same type, accumulators must be tested, in lieu of the testing of

paragraph (f)(2)(iii) of this section, as follows:

(A) One (1) accumulator must be tested to the minimum design burst pressure;

(B) Two (2) accumulators, one at the beginning of production and one at the end must be tested to at least two and a half times the charge pressure without evidence of leakage or distortion;

(C) If accumulators fail either test, an additional four (4) sets of accumulators from the lot may be tested. If any additional accumulators fail, the lot must be rejected;

(D) Accumulators must be packaged in strong outer packaging.

(iii) For an accumulator with a gas space not to exceed 30 cubic inches, it must be designed and fabricated with a burst pressure of not less than four (4) times its charged pressure at 70 °F. Out of each lot not to exceed 1,000 successively produced accumulators per day of the same type, accumulators must be tested, in lieu of the testing of paragraph (f)(2)(iii) of this section, as follows:

(A) One (1) accumulator must be tested to the minimum design burst pressure;

(B) Two (2) accumulators, one at the beginning of production and one at the end must be tested to at least two and a half times the charge pressure without evidence of leakage or distortion;

(C) If accumulators fail either test, an additional four (4) sets of accumulators from the lot may be tested. If any additional accumulators fail, the lot must be rejected;

(D) Accumulators must be packaged in strong outer packaging.

(4) Accumulators intended to function as shock absorbers, struts, gas springs, pneumatic springs or other impact or energy-absorbing devices are not subject to the requirements of this subchapter provided each:

(i) Has a gas space capacity not exceeding 1.6 L and a charge pressure not exceeding 280 bar, where the product of the capacity expressed in liters and charge pressure expressed in bars does not exceed 80 (for example, 0.5 L gas space and 160 bar charge pressure);

(ii) Has a minimum burst pressure of 4 times the charge pressure at 20 °C for products not exceeding 0.5 L gas space capacity and 5 times the charge pressure for products greater than 0.5 L gas space capacity;

(iii) Design type has been subjected to a fire test demonstrating that the article relieves its pressure by means of a fire degradable seal or other pressure relief device, such that the article will not fragment and that the article does not rocket; and

(iv) Accumulators must be manufactured under a written quality assurance program which monitors parameters controlling burst strength, burst mode and performance in a fire situation as specified in paragraphs (f)(4)(i) through (f)(4)(iii) of this section. A copy of the quality assurance program must be maintained at each facility at which the accumulators are manufactured.

(5) Accumulators not conforming to the provisions of paragraphs (f)(1) through (f)(4) of this section, may only be transported subject to the approval of the Associate Administrator.

* * * * *

(k) *Aerosols for recycling or disposal.* Aerosols (as defined in § 171.8 of the subchapter) intended to be recycled or for disposal may be transported only under the following conditions:

(1) Used aerosols conforming to paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of this section are not subject to the 30 kg (66 pounds) gross weight limitation when transported by motor vehicle for purposes of recycling or disposal under the following conditions:

(i) The strong outer packaging and its contents must not exceed a gross weight of 500 kg (1,100 pounds);

(ii) Each aerosol must be secured with a cap to protect the valve stem or the valve stem must be removed; and

(iii) The packaging must be offered for transportation or transported by—

(A) Private or contract motor carrier; or

(B) Common carrier in a motor vehicle under exclusive use for such service.

(2) Aerosols intended to conform to (a)(3) or (a)(5) at the time of filling but that are leaking or have been improperly filled may be transported for disposal under the conditions provided below. These aerosols are not eligible for the exceptions provided in paragraphs (a) and (i) of this section except for subpart F (Placarding) of part 172 of this subchapter.

(i) *Packaging.* (A) The aerosols must be packaged in a metal or plastic removable head salvage drum that is a UN 1A2, 1B2, 1N2 or 1H2 drum tested and marked for at least the Packing Group II performance level for liquids;

(B) Each drum shall be provided, when necessary, with sufficient cushioning and absorption material to prevent excessive shifting of the aerosols and to eliminate the presence of any free liquid at the time the drum is closed. All cushioning and absorbent material used in the drum must be compatible with the hazardous material; and

(C) The pressure inside each completed drum, at any time during transportation, may not exceed the design test pressure marked on the drum.

(ii) *Hazard communication.* (A) Instead of the marking requirements for non-bulk packages in § 172.301 of this subchapter, each drum must be marked with either ''AEROSOL SALVAGE'' or ''AEROSOL SALVAGE DRUM'' in association with the required label(s); and

(B) The overpack marking requirements of § 173.25 of this subchapter do not apply.

(3) *Modal restrictions.* The completed drums must be offered for transportation or transported by private or contract carrier going by highway or rail. Vessel or air transportation is not authorized.

* * * * *

(m) For additional exceptions, *see* § 173.307 of this part.

33. In § 173.315, paragraph (a)(2) table, the entry ''Division 2.2 materials not specifically provided for in this table'' is revised, and a new Note 28 is added. The revision and addition read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

(a) * * *

(1) * * *

(2) * * *

Kind of gas	Maximum permitted filling density		Specification container required	
	Percent by weight (see Note 1)	Percent by volume (see par. (f) of this section)	Type (see Note 2)	Minimum design pressure (psig)
* * *	*	*	*	*
Division 2.2, materials not specifically provided for in this table.	See par. (c) of this section.	See Note 7	DOT–51, MC–330, MC–331.	See Notes 19 and 28.
* * *	*	*	*	*

* * * * *

Note 28: For UN1080, Sulfur hexafluoride, a non-specification cargo tank that otherwise conforms to a DOT Specification MC 331 cargo tank except for design pressure and capacity is authorized. Design pressure may not exceed 600 psig. The water capacity range for each tank is 15 to 500 gallons.

* * * * *

■ 34. In § 173.319, revise paragraph (d)(2) table to read as follows:

§ 173.319 Cryogenic liquids in tank cars.

* * * * *

(d) * * *

(2) * * *

PRESSURE CONTROL VALVE SETTING OR RELIEF VALVE SETTING

Maximum start-to-discharge pressure (psig)	Maximum permitted filling density (percent by weight)			
	Ethylene	Ethylene	Ethylene	Hydrogen
17	.....	.....	.....	6.60
45	52.8			
75		51.1	51.1	
Maximum pressure when offered for transportation.	10 psig	20 psig	20 psig	
Design service temperature	Minus 260 °F	Minus 260 °F	Minus 155 °F	Minus 423 °F.
Specification (see § 180.507(b)(3) of this subchapter).	113D60W 113C60W	113C120W	113D120W	113A175W. 113A60W.

* * * * *

■ 35. In § 173.322, add paragraph (f) to read as follows:

§ 173.322 Ethyl chloride.

* * * * *

(f) *Exceptions.* Ethyl chloride may be transported by motor vehicle, railcar, or cargo vessel as a limited quantity under the following conditions:

(1) *Packaging.* A specification DOT–2P or a DOT–2Q non-refillable inner receptacle with a maximum capacity of not more than four (4) fluid ounces, inside an outer packaging tested and certified to the PG I level.

(2) *Marking.* Each outer packaging must be plainly and durably marked ''NOT AUTHORIZED FOR TRANSPORTATION BY PASSENGER OR CARGO AIRCRAFT''.

* * * * *

PART 174—CARRIAGE BY RAIL

■ 36. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 37. In § 174.67, revise paragraph (g) to read as follows:

§ 174.67 Tank car unloading.

* * * * *

(g) The valve cap, or the reducer when a large outlet is to be used, must be removed with a suitable wrench after the set screws are loosened and a pail must be placed in position to catch any liquid that may be in the outlet chamber. If the valve cap or reducer does not unscrew easily, it may be tapped lightly with a mallet or wooden block in an upward direction. If leakage shows upon starting the removal, the cap or reducer may not be entirely unscrewed. Sufficient threads must be left engaged and sufficient time allowed to permit controlled escape of any accumulation of liquid in the outlet chamber. If the leakage stops or the rate of leakage diminishes materially, the cap or reducer may be entirely removed. If the initial rate of leakage continues, further efforts must be made to seat the outlet valve (see paragraph (f) of this section). If this fails, the cap or reducer must be screwed up tight and the tank must be unloaded through the dome. If upon removal of the outlet cap the outlet chamber is found to be blocked with frozen liquid or any other matter, the cap must be replaced immediately and a careful examination must be made to determine whether the outlet casting has been cracked. If the obstruction is not frozen liquid, the car must be unloaded through the dome. If the obstruction is frozen liquid and no crack has been found in the outlet casting, the car may, if circumstances require it, be unloaded from the bottom by removing the cap and attaching unloading connections immediately. Before opening the valve inside the tank car with a frozen liquid blockage:

(1) Steam must be applied to the outside of the outlet casting or wrap casting with burlap or other rags and apply hot water to the wrapped casting to melt the frozen liquid; or

(2) For combustible liquid or Class 3 liquid petroleum distillate fuels the blockage may be cleared by attaching a fitting to the outlet line and applying nitrogen at a pressure of 50 to 100 psi.

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 38. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 39. Revise § 176.90 to read as follows:

§ 176.90 Private Automobiles.

(a) *Class 1 (explosive) material.* A private automobile which is carrying any Class 1 (explosive) material (except permitted fireworks or small arms ammunition) may not be transported on a passenger-carrying ferry vessel unless the Class 1 (explosive) material is in compliance with packaging, labeling, marking, and certification requirements of this subchapter. Permitted fireworks and small arms ammunition may be carried without the required packaging, labeling, marking, or certification if they are in tight containers.

(b) *Engines, gasoline, or liquefied petroleum gas.* Engines, internal combustion, flammable gas powered *or* flammable liquid powered, including when fitted in machinery or vehicles (*i.e.* motor vehicles, recreational vehicles, campers, trailers), vehicle flammable liquid *or* flammable gas powered, gasoline, and petroleum gases, liquefied *or* liquefied petroleum gas when included as part of a motor home, recreational vehicle, camper, or trailer; are excepted from the requirements of this subchapter if the following conditions are met:

(1) Any container showing deterioration which might affect its integrity must not be allowed on board the vessel. A visual inspection by a responsible member of the crew must be made of each cylinder of liquefied petroleum gas before it may be allowed aboard the vessel. A cylinder that has a crack or leak, is bulged, has a defective valve or a leaking or defective pressure relief device, or bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, may not offered for transportation on board the vessel. Leaking or damaged containers of gasoline may not be offered for transportation on board the vessel.

(2) Motor vehicles may be stowed in the same hold or compartment or on the vehicle deck of passenger vessels with cylinders of liquefied petroleum gas when the cylinders are securely attached to recreational vehicles, such as campers or trailers.

(3) Extra containers of gasoline (including camp stove or lantern fuel) and portable cylinders of liquefied petroleum gas (including cylinders for camping equipment) not securely attached to recreational vehicles must be stowed in the vessel's paint locker. Containers must be securely closed.

(4) All liquefied petroleum gas cylinders must be secured by closing the shut-off valves prior to the recreational vehicles being loaded on the vessels. The owner or operator of each recreational vehicle must be directed to close all operating valves within the vehicles.

(5) ''No smoking'' signs must be posted on the vehicle decks and, if used for storage of hazardous materials; in close proximity to the vessel's paint locker.

(6) An hourly patrol of the vehicle decks must be made by a crewmember. Any unusual or dangerous situation must be reported to the vessel's master.

(7) Passengers may be allowed on the vehicle decks during the voyage and are subject to the control of the crew personnel conducting the continuous vehicle deck patrol.

(8) Each person responsible for performing a function authorized by this section must be trained in accordance with subpart H of part 172 of this subchapter and on the requirements of this section.

(9) Shipments made under this paragraph are subject to the Hazardous Materials Incident Reporting requirements specified in §§ 171.15 and 171.16 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 40. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; sec. 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994); sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); 49 CFR 1.81 and 1.97.

■ 41. Section 177.820 is added to read as follows:

§ 177.820 Movement of motor vehicles across highways.

Materials in Class 2, Class 3, Class 4, Class 5, Class 6, Class 8, and Class 9; Class 7 Radioactive material, excepted packages (UN 2908, UN 2909, UN 2910, and UN 2911); and Combustible liquids are not subject to 49 CFR, Part 172 Subparts C (Shipping Papers), D (Marking), E (Labeling), and F (Placarding) of part 172 when moved directly across a public road provided:

(a) The movement is from one part of a facility to another;

(b) The public road is not more than a two lane single roadway; and

(c) Access to the public road must be restricted by signals, lights, gates, or similar controls.

■ 42. In § 177.834, revise paragraphs (i)(3), (i)(4), and (l)(2)(i) remove and reserve paragraph (l)(2)(ii) to read as follows:

§ 177.834 General Requirements.

* * * * *

(i) * * *

(3) A qualified person ''attends'' the loading or unloading of a cargo tank only if, throughout the process:

(i) Except for unloading operations subject to §§ 177.837(d), 177.840(p), and 177.840(q), the qualified person is within 7.62 m (25 feet) of the cargo tank. The qualified person attending the unloading of a cargo tank must be alert and have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable during the unloading operation; or

(ii) The qualified person observes all loading or unloading operations by means of a video monitor located at a remote control station, and the loading or unloading system is equipped as follows:

(A) The video monitoring system must have a motorized zoom lens, and must be capable of panning and zooming from the remote control station. The camera must be mounted so as to provide an unobstructed view of all equipment involved in the loading or unloading operations, including all valves, hoses, domes, and safety relief devices. In addition, the view capability must include the entire containment area.

(B) Upon loss of video, loading or unloading operations must be immediately terminated.

(C) Shut-off valves operable from the remote control station must be provided.

(D) In the event of a remote system failure, a qualified person must immediately resume attending the loading or unloading of the cargo tank as provided in paragraph (i)(3)(i).

(E) A containment area must be provided capable of holding the contents of as many cargo tank motor vehicles as might be loaded at any single time.

(F) A qualified person must personally conduct a visual inspection of each cargo tank motor vehicle after it is loaded, prior to departure, for any damage that may have occurred during loading; or

(iii) Hoses used in the loading or unloading operations are equipped with cable connected wedges, plungers or flapper valves located at each end of the hose, able to stop the flow of product from both the source and the receiving tank within one second without human intervention in the event of a hose rupture, disconnection or separation.

(A) Prior to each use, each hose must be inspected to ensure that it is of sound quality, without defects detectable through visual observation; and

(B) The loading or unloading operations must be physically inspected

by a qualified person at least once every sixty (60) minutes.

(4) A person is ''qualified'' if he has been made aware of the nature of the hazardous material which is to be loaded or unloaded, has been instructed on the procedures to be followed in emergencies, and except for persons observing loading or unloading operations by means of a video monitor and persons inspecting hoses in accordance with paragraph (3)(iii)(B), is authorized to move the cargo tank, and has the means to do so.

* * * * *

(l) * * *

(2) * * *

(i) *Use of combustion cargo heaters.* A motor vehicle equipped with a combustion cargo heater may be used to transport Class 3 (flammable liquid) or Division 2.1 (flammable gas) materials only if the following requirements in paragraph (A) or (B) are met:

(A) The combustion cargo heater is powered by diesel fuel or propane and each of the following requirements are met:

(*1*) Electrical apparatus in the cargo compartment is non-sparking or explosion proof.

(*2*) There is no combustion apparatus in the cargo compartment.

(*3*) There is no connection for return of air from the cargo compartment to the combustion apparatus.

(*4*) The heating system will not heat any part of the cargo to more than 54 °C (130 °F).

(*5*) Heater requirements under § 393.77 of this title are complied with.

(*6*) The heater unit and its fuel supply must be externally mounted on the truck or trailer.

(*7*) The heater unit must retain combustion in a sealed combustion chamber.

(*8*) The heater unit must utilize outside air for combustion (air from the cargo space cannot be used for combustion).

(*9*) Heater unit combustion gases must be exhausted to the outside of the truck or trailer.

(B) It is a catalytic heater and each of the following requirements are met:

(*1*) The heater's surface temperature cannot exceed 54 °C (130 °F)—either on a thermostatically controlled heater or on a heater without thermostatic control when the outside or ambient temperature is 16 °C (61 °F) or less.

(*2*) The heater is not ignited in a loaded vehicle.

(*3*) There is no flame, either on the catalyst or anywhere in the heater.

(*4*) The manufacturer has certified that the heater meets the requirements under paragraph (l)(2)(i)(B) of this section by permanently marking the heater *''MEETS DOT REQUIREMENTS FOR CATALYTIC HEATERS USED WITH FLAMMABLE LIQUID AND GAS.''*

(5) The heater is also marked *''DO NOT LOAD INTO OR USE IN CARGO COMPARTMENTS CONTAINING FLAMMABLE LIQUID OR GAS IF FLAME IS VISIBLE ON CATALYST OR IN HEATER.''*

\(ii) [Reserved]

* * * * *

■ 43. In § 177.838, the title of the section is revised and paragraph (i) is added to read as follows:

§ 177.838 Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (self-heating and pyroforic liquid) materials.

* * * * *

(i) Division 4.2 (self-heating) materials. Notwithstanding the segregation requirements of § 177.848(d) of this part, the following Division 4.2 (self-heating) materials may be transported on the same transport vehicle with Class 8 (corrosive) materials. The hazardous materials must be palletized with a minimum height of 100 mm (4 inches) off the floor of the vehicle, and the Division 4.2 (self-heating) material is separated from the corrosive material by a minimum horizontal distance of 1.2 m (4 feet).

(1) Sodium hydrosulfite *or* sodium dithionite, UN1384, in Packing Group II or III packaged in UN 1A2 steel drums that meet the Packing Group II performance requirements of subpart M of part 178 of this title.

(2) Thiourea dioxide, UN3341, in Packing Group II or III packaged in UN 1G fiber drums meeting packing group II performance requirements of subpart M of part 178 of this title.

(3) Self-heating, solid, organic, n.o.s., UN3088, in Packing Group II or III packaged in UN 1G fiber drums meeting packing group II performance requirements of subpart M of part 178 of this title.

* * * * *

■ 44. In § 177.840, add paragraph (a)(3) to read as follows:

§ 177.840 Class 2 (gases) materials.

(a) * * *

(3) *Cylinders containing material classed as Division 2.3, Hazard Zone A.* (i) Notwithstanding the segregation requirements of § 177.848(d) of this part, a cylinder containing a Division 2.3, Hazard Zone A materials may be transported on the same transport vehicle with materials classed as Division 2.1, Class 3, Class 4, Class 5, and Class 8 if all of the following requirements are met:

(A) The Division 2.3, Hazard Zone A material must be packaged as authorized by this subchapter. In addition, each package must be must be placed in a plastic bag which is taped closed and then overpacked in a UN 1A2 steel drum tested and marked for a Packing Group II or higher performance level with insulation material inside to protect the cylinders from fire. The outside of the overpack must be marked with an indication that the inner packagings conform to the prescribed specifications.

(B) A Division 2.1 material requiring strong non-bulk outer packagings in accordance with § 173.301(a)(9) of this subchapter must be overpacked in a UN 1A2 steel or 1H2 plastic drum tested and marked for a Packing Group II or higher performance level. The outside of the overpack must be marked with an indication that the inner packagings conform to the prescribed specifications.

(C) Packages containing Division 2.3 Hazard Zone A material must be separated within the transport vehicle from packages containing Division 2.1, Class 3, Class 4, Class 5, and Class 8 materials by a minimum horizontal distance of 1.5 m (5 feet). In addition, all steel or plastic overpacks containing packages of Division 2.3, Hazard Zone A or Division 2.1 material must be placed on pallets within the transport vehicle.

(ii) Notwithstanding the segregation requirements of § 177.848(d) of this part, Division 2.3, Hazard Zone A materials may be transported on the same transport vehicle with non-bulk packagings and IBCs meeting a UN performance standard containing only the residue of Division 2.1, 4.3, 5.1, and Class 3 and 8 materials if all of the following requirements are met:

(A) The materials are transported in enclosed trailers equipped with inlet and outlet vent openings with a minimum total area of one square foot per 1,000 cubic feet of trailer volume. Electrical systems within the trailer's interior must be non-sparking or explosion proof.

(B) Cylinders must be transported in an upright position and securely restrained within the trailer, or loaded into racks, secured to pallets, or packed in wooden or fiberboard boxes or crates to prevent the cylinders from shifting or overturning within the motor vehicle under normal transportation conditions. If cylinders are secured to a pallet, the pallet must be designed to transport 1,590 kg (3,500 lbs.) per pallet and the cylinders must be secured within the

pallet by a web strap rated at 4,545 kg (10,000 lbs.).

(C) A cylinder containing Division 2.3 Hazard Zone A materials must be separated from non-bulk packagings and IBCs meeting a UN performance standard containing the residue of materials in Division 2.1, 4.3, or 5.1, or Class 3 or 8 by a minimum horizontal distance of 3 m (10 feet). The maximum gross weight of Division 2.3 Hazard Zone A material carried on one vehicle must not exceed 3,636 kg (8,000 lbs.).

(D) Motor carriers must have a ''satisfactory'' safety rating as prescribed in Part 385 of this Title.

* * * * *

■ 45. In § 177.841, add paragraph (f) to read as follows:

§ 177.841 Division 6.1 and Division 2.3 materials.

* * * * *

(f) Notwithstanding the segregation requirements of § 177.848(d) of this part, when transported by highway by private or contract motor carrier, Division 6.1 Packing Group I, Hazard Zone A materials meeting the definition of a hazardous waste as provided in § 171.8 of this subchapter, may be transported on the same transport vehicle with materials classed as Class 3, Class 4, Class 5, and Class 8. The Division 6.1 Packing Group I, Hazard Zone A materials must be loaded on pallets and separated from the Class 3, Class 4, Class 5, and Class 8 materials by a minimum horizontal distance of 2.74 m (9 feet) when in conformance with the following:

(1) These materials are placed in combination packagings as prescribed in § 173.226(c).

(2) Combination packages containing materials poisonous by inhalation, Division 6.1, Packing Group I, Hazard Zone A, must be:

(i) Filled and packed by employees;

(ii) On pallets, when in a transport vehicle; and

(iii) Separated from hazardous materials assigned to Class 3, Class 8 or Divisions 4.1, 4.2, 4.3, 5.1, 5.2 by a nine foot (minimum distance) buffer zone, when in a transport vehicle. The buffer zone may be established by:

(A) A load lock;

(B) Empty drums;

(C) Drums containing hazardous materials (*e.g.,* Class 9) that are compatible with materials in all other drums immediately around them; or

(D) Drums containing non-hazardous materials that are compatible with materials in all other drums immediately around them.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 46. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 47. Section 178.33c is added to read as follows:

Sec.

178.33c Specification 2P; inner nonrefillable metal receptacle variations.
178.33c–1 Compliance.
178.33c–2 Variation 1.
178.33c–2 Variation 1.

§ 178.33c Specification 2P; inner nonrefillable metal receptacle variations.

§ 178.33c–1 Compliance.

Each container must continue to comply with the details for a 2P container in accordance with § 178.33–1 of this subpart except for the specific variations provided in this section.

§ 178.33c–2 Variation 1.

In accordance with § 178.33c–1, the following modifications or additional conditions apply under Variation 1—

(a) *Manufacture.* Side seams: Not permitted. Ends: The ends shall be designed to withstand pressure and be equipped with a pressure relief system (*e.g.,* rim-venting release or a dome expansion device) designed to function prior to bursting of the container.

(b) *Tests.* (1) One out of each lot of 25,000 containers or less, successively produced per day complete with ends assembled (and without a pressure relief system assembled) shall be pressure tested to destruction at gauge pressure and must not burst below 240 psig. For containers with a pressure relief system as described in paragraph (a) of this section and assembled, it must function at not less than 175 psig and not greater than 85% of the minimum design burst pressure for that container (minimum 240 psig). Failure at a location other than the pressure relief system will reject the lot.

(2) Each such 25,000 containers or less, successively produced per day, shall constitute a lot and if the test container(s) shall fail, the lot shall be rejected. For containers with an end expansion device, the lot must be rejected if the container bursts prior to buckling of the device. Otherwise, ten (10) additional containers of each container design produced may be selected at random and subjected to the test. These containers shall be complete with ends assembled. Should any of the containers thus tested fail, the entire lot must be rejected. All containers constituting a lot shall be of like material, size, design construction, finish, and quality.

(c) Each container must be marked to show: DOT–2P1.

■ 48. Section 178.33d is added to read as follows:

Sec.

178.33d Specification 2Q; inner nonrefillable metal receptacle variations.
178.33d–1 Compliance.
178.33d–2 Variation 1.
178.33d–3 Variation 2.

§ 178.33d Specification 2Q; inner nonrefillable metal receptacle variations.

§ 178.33d–1 Compliance.

Each container must continue to comply with the details for a 2Q container in accordance with § 178.33a–1 of this subpart except for the specific variations provided in this section.

§ 178.33d–2 Variation 1.

In accordance with § 178.33d–1, the following modifications or additional conditions apply under Variation 1—

(a) *Type and size.* The maximum capacity of containers in this class shall not exceed 0.40 L (24.4 cubic inches). The maximum inside diameter shall not exceed 2.1 inches.

(b) *Manufacture.* Ends: The top of the container must be designed with a pressure relief system consisting of radial scores on the top seam(s). The bottom of the container must be designed to buckle at a pressure greater than the pressure at which the top buckles and vents.

(c) *Wall thickness.* The minimum wall thickness for any container shall be 0.0085 inches.

(d) *Tests.* (1) Two containers (one without a pressure relief system and one with) out of each lot of 2,500 or less, successively produced per day shall be pressure tested to destruction at gauge pressure. The container without a pressure relief system must not burst below 300 psig. The container assembled with a pressure relief system as described in paragraph (b) of this section must be tested such that the top (dome) buckles at not less than 75% of the tested burst pressure (minimum 300 psig).

(2) Each such 2,500 containers or less, successively produced per day, shall constitute a lot and if the test container(s) shall fail, the lot shall be rejected. Otherwise, five (5) additional pairs of containers may be selected at random and subjected to the test under which failure occurred. Should any of the containers thus tested fail, the entire lot must be rejected. All containers constituting a lot shall be of like material, size, design construction, finish, and quality.

(e) Each container must be marked to show: DOT–2Q1.

§ 178.33d–3 Variation 2.

In accordance with § 178.33d–1, the following modifications or additional conditions apply under Variation 2—

(a) *Manufacture.* Ends: The ends shall be designed to withstand pressure and the container equipped with a pressure relief system (*e.g.,* rim-venting release or a dome expansion device) designed to buckle prior to the burst of the container.

(b) *Tests.* One out of each lot of 10,000 containers or less, successively produced per day shall be pressure tested to destruction at gauge pressure and must not burst below 270 psig. For containers with a pressure relief system as described in paragraph (a) of this section and assembled, it must function at not less than 175 psig and not greater than 85% of the minimum design burst pressure of that container (minimum 270 psig). Failure at a location other than the pressure relief system will reject the lot.

(c) Each container must be marked to show: DOT–2Q2.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 49. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 50. Section 180.209 is amended as follows:

■ a. In paragraph (a), Table 1 ''Requalification of Cylinders'' is amended, and a footnote is added;

■ b. Revise paragraph (e); and

■ c. Amend the Table in paragraph (g).

The revision and amendments read as follows.

§ 180.209 Requirements for requalification of specification cylinders.

(a) * * *

TABLE 1—REQUALIFICATION OF CYLINDERS [1]

Specification under which cylinder was made	Minimum test pressure (psig) [2]	Requalification period (years)
DOT 3	3000 psig	5.
DOT 3A, 3AA	5/3 times service pressure, except noncorrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(b), (e), (f), (h), and (j)).
DOT 3AL	5/3 times service pressure	5, 10 or 12 (*see* § 180.209(e), (j) and § 180.209(m) [3]).
DOT 3AX, 3AAX	5/3 times service pressure	5, 10 (*see* § 180.209(e).
3B, 3BN	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(e), (f)).
3E	Test not required.	
3HT	5/3 times service pressure	3 (*see* §§ 180.209(k) and 180.213(c)).
3T	5/3 times service pressure	5.
4AA480	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(e) or (h)).
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(e), (f), and (j)).
4D, 4DA, 4DS	2 times service	5.
DOT 4E	2 times service pressure, except non-corrosive (*see* § 180.209(g)).	5 or 10 (See § 180.209(e)).
4L	Test not required.	
8, 8AL		10 or 20 (*see* § 180.209(i)).
Exemption or special permit cylinder	*See* current exemption or special permit	*See* current exemption or special permit.
Foreign cylinder (*see* § 173.301(j) of this subchapter for restrictions on use).	As marked on cylinder, but not less than 5/3 of any service or working pressure marking.	5 (*see* §§ 180.209(l) and 180.213(d)(2)).

[1] Any cylinder not exceeding 2 inches outside diameter and less than 2 feet in length is excepted from volumetric expansion test.
[2] For cylinders not marked with a service pressure, see § 173.301a(b) of this subchapter.
[3] This provision does not apply to cylinders used for carbon dioxide, fire extinguisher or other industrial gas service.

* * * * *

(e) Proof pressure test. A cylinder made in conformance with specifications 4B, 4BA, 4BW, or 4E protected externally by a suitable corrosion-resistant coating and used exclusively for non-corrosive gas that is commercially free from corroding components may be requalified by volumetric expansion testing or proof pressure testing every 10 years instead of every 5 years. When subjected to a proof pressure test, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

* * * * *

(g) * * *

Cylinders conforming to . . .	Used exclusively for . . .
* * * * * * *	
DOT 4BW	Alkali metal alloys, liquid, n.o.s., Alkali metal dispersions or Alkaline earth metal dispersions, Potassium, Potassium Sodium alloys and Sodium that are commercially free of corroding components.

* * * * *

■ 51. In § 180.213, revise paragraph (c) to read as follows:

§ 180.213 Requalification markings.

* * * * *

(c) Requalification marking method. The depth of requalification markings may not be greater than specified in the applicable specification. The markings must be made by stamping, engraving, scribing, or applying a label embedded in epoxy that will remain legible and durable throughout the life of the

cylinder, or by other methods that produce a legible, durable mark.

* * * * *

Issued in Washington, DC.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

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