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# Contents

**Federal Register**

Vol. 76, No. 226

Wednesday, November 23, 2011

**Agency for Healthcare Research and Quality**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72414–72416

**Agriculture Department**
*See* Food Safety and Inspection Service

**Air Force Department**
NOTICES
Privacy Act; Systems of Records, 72399–72400

**Army Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72400

**Centers for Disease Control and Prevention**
NOTICES
Charter Renewals:
Board of Scientific Counselors, Office of Infectious Diseases, 72416
Meetings:
Subcommittee for Dose Reconstruction Reviews, Advisory Board on Radiation and Worker Health, etc., 72416–72417
National Health and Nutrition Examination Survey DNA Samples, 72417
Public Health Service Guidelines:
Reducing Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Hepatitis C Virus Through Solid Organ Transplantation, 72417–72418

**Children and Families Administration**
NOTICES
Statement of Organization, Functions, and Delegations of Authority:
Administration on Developmental Disabilities, 72418–72420

**Coast Guard**
RULES
Drawbridge Operations:
Chelsea River, Chelsea and East Boston, MA, 72309
Neuse River, New Bern, NC, 72309–72311
Upper Mississippi River, Dubuque, IA, 72308–72309
PROPOSED RULES
Safety Zones:
Marco Island Marriott Charity Fireworks Display, Gulf of Mexico, Marco Island, FL, 72369–72371

**Commerce Department**
*See* Industry and Security Bureau
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
*See* Patent and Trademark Office

**Comptroller of the Currency**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72497–72498

**Consumer Product Safety Commission**
NOTICES
Meetings; Sunshine Act, 72391

**Defense Department**
*See* Air Force Department
*See* Army Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulations; Organization and Direction of Work, 72413
Defense Logistics Agency Revised Regulations:
Environmental Considerations in Defense Logistics Agency Actions, 72391
Privacy Act; Systems of Records, 72391–72399
TRICARE:
Calendar Year 2012 TRICARE Young Adult Program Premium Update, 72399

**Drug Enforcement Administration**
PROPOSED RULES
Classification of Two Steroids, Prostanozol and Methasterone, as Schedule III Anabolic Steroids Under the Controlled Substances Act, 72355–72362

**Education Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72400–72401

**Energy Department**
*See* Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Test Procedure for Microwave Ovens, 72332–72348

**Environmental Protection Agency**
RULES
Hazardous Waste Management System:
Identification and Listing of Hazardous Waste; Final Exclusion, 72311–72325
PROPOSED RULES
Approvals and Promulgations of Air Quality Implementation Plans:
Connecticut; Determinations of Attainment of One-Hour Ozone Standard, 72377–72382
Maryland; Baltimore Nonattainment Area Determinations of Attainment of 1997 Annual Fine Particulate Standard, 72374–72376
National Emissions Standards for Hazardous Air Pollutants:
Ferroalloys Production, 72508–72558
NOTICES
Access to Confidential Business Information by Primus Solutions, Inc., 72403–72404
Adequacy Status of Motor Vehicle Emissions Budgets:
Submitted PM10 Maintenance Plan for Sacramento County, CA, 72404
Pesticide Registrations; Availability:
Non-Dietary Exposure Task Force, 72404–72405
Proposed Prospective Purchaser Agreements:
San Fernando Valley Area 2 Superfund Site, 4057 and 4059 Goodwin Avenue, Los Angeles, CA, 72405

Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations, 72405–72408

**Executive Office of the President**
*See* Management and Budget Office
*See* Presidential Documents

**Federal Aviation Administration**
**PROPOSED RULES**
Airworthiness Directives:
Airbus Airplanes, 72350–72353
Pratt and Whitney Turbofan Engines, 72348–72350, 72353–72355
**NOTICES**
Meetings:
Executive Committee of the Aviation Rulemaking Advisory Committee, 72494
Petitions for Exemption; Summaries of Petitions Received, 72494

**Federal Deposit Insurance Corporation**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72497–72498

**Federal Emergency Management Agency**
**NOTICES**
Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, etc., 72431–72433

**Federal Energy Regulatory Commission**
**RULES**
Bidding by Affiliates in Open Seasons for Pipeline Capacity, 72301–72306
**NOTICES**
Combined Filings, 72401–72403

**Federal Maritime Commission**
**NOTICES**
Agreements Filed, 72408
Ocean Transportation Intermediary Licenses:
Applicants, 72409–72410
Reissuances, 72408–72409
Revocations, 72409

**Federal Motor Carrier Safety Administration**
**NOTICES**
Petitions for Determinations of Preemption:
Alabama Metal Coil Securement Act, 72495–72496

**Federal Railroad Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72496–72497

**Federal Reserve System**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72410–72413, 72497–72498

**Fiscal Service**
**NOTICES**
Rate for Use in Federal Debt Collection and Discount and Rebate Evaluation, 72498–72499

**Fish and Wildlife Service**
**NOTICES**
Endangered Species Permit Applications, 72434–72435

**Food and Drug Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Recall Regulations, 72420–72422
Draft Guidance for Industry; Availability:
Evaluating Effectiveness of Anticoccidial Drugs in Food-Producing Animals, 72422
Meetings:
Bridging Idea Development Evaluation Assessment and Long-Term Initiative and Total Product Life Cycle, etc.; Correction, 72423
Tobacco Products Scientific Advisory Committee, 72422–72423

**Food Safety and Inspection Service**
**PROPOSED RULES**
Shiga Toxin-Producing Escherichia coli in Certain Raw Beef Products:
Public Meeting; Extension of Comment Period, 72331–72332

**Foreign Assets Control Office**
**NOTICES**
Actions Taken Pursuant to Executive Order 13382 Related to the Islamic Republic of Iran Shipping Lines, 72499–72502
Specially Designated Nationals and Blocked Persons of Certain Entities Pursuant to Executive Order 13566:
Removal from List, 72502–72505

**General Services Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulations; Organization and Direction of Work, 72413

**Health and Human Services Department**
*See* Agency for Healthcare Research and Quality
*See* Centers for Disease Control and Prevention
*See* Children and Families Administration
*See* Food and Drug Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health
**RULES**
Privacy Act; Exempt Record System, 72325–72327
**NOTICES**
Request for Co-Sponsors for the Office of Healthcare Qualitys Programs to Strengthen Coordination and Impact of National Efforts in the Prevention of Healthcare-Associated Infections; Correction, 72413

**Health Resources and Services Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72423–72424

**Homeland Security Department**
*See* Coast Guard
*See* Federal Emergency Management Agency
*See* Transportation Security Administration
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Protected Repository for the Defense of Infrastructure Against Cyber Threats Program, 72426–72427

Meetings:
President's National Security Telecommunications Advisory Committee, 72427
Privacy Act; Systems of Records, 72428–72431

**Housing and Urban Development Department**
RULES
Federal Housing Administration Appraiser Roster:
Appraiser Qualifications for Placement on FHA Appraiser Roster, 72306–72308

**Industry and Security Bureau**
NOTICES
Order Relating to Xun Wang, 72387–72388

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* National Park Service

**Internal Revenue Service**
PROPOSED RULES
Application of the Segregation Rules to Small Shareholders, 72362–72367
Income of Foreign Governments and International Organizations; Correction, 72367–72368
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72505–72506

**International Trade Administration**
NOTICES
Antidumping Duty Administrative Reviews; Extensions of Time Limits for Preliminary Results:
Glycine from People's Republic of China, 72388–72389

**International Trade Commission**
NOTICES
Antidumping Investigations:
Certain Steel Nails from United Arab Emirates; Final Scheduling, 72438–72439
Complaints; Solicitations of Comments, etc.:
Certain Consumer Electronics and Display Devices and Products Containing Same, 72439–72440
Countervailing Duty and Antidumping Investigations:
Bottom Mount Combination Refrigerator–Freezers from Korea and Mexico, 72440–72441
Certain Steel Wheels from China; Scheduling of Final Phase, 72441–72442
Investigations:
Certain Automotive GPS Navigation Systems, Components thereof, and Products Containing Same, 72442–72444
Meetings; Sunshine Act, 72444

**Justice Department**
*See* Drug Enforcement Administration
NOTICES
Lodgings of Consent Decrees:
Resolving Claims for Contamination of Mountain Lake in Presidio of San Francisco, 72444

**Labor Department**
*See* Occupational Safety and Health Administration

**Land Management Bureau**
NOTICES
Filings of Plats of Surveys:
Alaska, 72435
Meetings:
Pecos District Resource Advisory Council, New Mexico, 72435

**Management and Budget Office**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72446–72449

**National Aeronautics and Space Administration**
RULES
Federal Acquisition Regulation Supplements:
Responsibility, Suspension and Debarment, 72327–72328
Miscellaneous Administrative Changes, 72328–72330
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulations; Organization and Direction of Work, 72413

**National Archives and Records Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72449

**National Institutes of Health**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Genetic Testing Registry, 72424–72425
Meetings:
National Institute of Diabetes and Digestive and Kidney Diseases, 72425–72426

**National Labor Relations Board**
PROPOSED RULES
Representation Case Procedures, 72368–72369

**National Oceanic and Atmospheric Administration**
PROPOSED RULES
Atlantic Highly Migratory Species:
Atlantic Shark Management Measures, 72383–72384
Electronic Dealer Reporting System Workshop, 72382–72383
Fisheries of Exclusive Economic Zone Off Alaska:
Chinook Salmon Bycatch Management in Gulf of Alaska Pollock Fishery; Amendment 93, 72384–72386
NOTICES
Applications:
Marine Mammals; File No. 16479, 72389
Meetings:
Pacific Fishery Management Council; Public Teleconference Workshop, 72389–72390
Permits:
Marine Mammals; File No. 15274, 72390–72391
Marine Mammals; File No. 16314, 72390

**National Park Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Proposed Reinstatement; Visibility Valuation Survey: Pilot Study, 72436
Environmental Impact Statements; Availability, etc.:
Protecting and Restoring Native Ecosystems by Managing Non-Native Ungulates, Hawaii Volcanoes National Park, 72436–72437
Minor Boundary Revision at Colorado National Monument, 72437–72438

**National Science Foundation**
NOTICES
Buy American Waiver under the American Recovery and Reinvestment Act of 2009, 72449–72450
Meetings; Sunshine Act, 72450–72451
Permit Applications Received under Antarctic Conservation Act of 1978, 72451

**Nuclear Regulatory Commission**
RULES
Enhancements to Emergency Preparedness Regulations, 72560–72600
NOTICES
Meetings:
ACRS Subcommittee on Materials, Metallurgy and Reactor Fuels, 72451–72452

**Occupational Safety and Health Administration**
NOTICES
Requests for Nominations:
Advisory Committee on Construction Safety and Health, 72445–72446

**Office of Management and Budget**
*See* Management and Budget Office

**Patent and Trademark Office**
PROPOSED RULES
Eliciting More Complete Patent Assignment Information, 72372–72374

**Personnel Management Office**
NOTICES
Meetings:
CFC–50 Commission; Establishment of Advisory Committee, 72452

**Postal Regulatory Commission**
NOTICES
International Mail Contract, 72452–72453
Post Office Closings, 72453–72459

**Presidential Documents**
PROCLAMATIONS
Special Observances:
National Child's Day (Proc. 8758), 72607–72608
National Family Week (Proc. 8756), 72601–72604
National Farm–City Week (Proc. 8757), 72605–72606
EXECUTIVE ORDERS
Iran; Energy and Petrochemical Sectors, Imposition of Certain Sanctions on Provisions, 72609–72612

**Public Debt Bureau**
*See* Fiscal Service

**Securities and Exchange Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72459–72461
Applications:
Bandon Capital Management, LLC and Northern Lights Fund Trust, 72462–72463
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 72469–72470, 72482–72483, 72488–72490
Financial Industry Regulatory Authority, Inc., 72463–72467
International Securities Exchange, LLC, 72472–72473
NASDAQ OMX BX, Inc., 72470–72472, 72486–72488, 72490–72492
NASDAQ OMX PHLX LLC, 72467–72469, 72480–72482
NASDAQ Stock Market LLC, 72473–72474, 72484–72486
NYSE Arca, Inc., 72474–72480
Options Clearing Corp., 72483–72484
Self-Regulatory Organizations; Proposed Rule Changes; Trading Halts Due to Extraordinary Market Volatility:
BATS Exchange, Inc.; BATS Y-Exchange, Inc.; NASDAQ OMX BX, Inc., et al., 72492–72493

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Motor Carrier Safety Administration
*See* Federal Railroad Administration
*See* Transportation Security Administration
NOTICES
Meetings:
Webinar on Alternative Organizational Structures for Certificate Management Entity, 72493

**Transportation Security Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Secure Flight Program, 72433–72434

**Treasury Department**
*See* Comptroller of the Currency
*See* Fiscal Service
*See* Foreign Assets Control Office
*See* Internal Revenue Service

---

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 72508–72558

**Part III**
Nuclear Regulatory Commission, 72560–72600

**Part IV**
Presidential Documents, 72601–72612

---

**Reader Aids**

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**3 CFR**

**Proclamations:**

8756 ..... 72603
8757 ..... 72605
8758 ..... 72607

**Executive Orders:**

13590 ..... 72609

**Proposed Rules:**

416 ..... 72331
417 ..... 72331
430 ..... 72331

**10 CFR**

50 ..... 72560
52 ..... 72560

**Proposed Rules:**

429 ..... 72332
430 ..... 72332

**14 CFR**

**Proposed Rules:**

39 (3 documents) ..... 72348, 72350, 72353

**18 CFR**

284 ..... 72301

**21 CFR**

**Proposed Rules:**

1300 ..... 72355

**24 CFR**

200 ..... 72306

**26 CFR**

**Proposed Rules:**

1 (2 documents) ..... 72362, 72367
602 ..... 72367

**29 CFR**

**Proposed Rules:**

101 ..... 72368
102 ..... 72368
103 ..... 72368

**33 CFR**

117 (3 documents) ..... 72308, 72309

**Proposed Rules:**

165 ..... 72369

**37 CFR**

**Proposed Rules:**

3 ..... 72372

**40 CFR**

261 ..... 72311

**Proposed Rules:**

52 (2 documents) ..... 72374, 72377
63 ..... 72508

**45 CFR**

5b ..... 72325

**48 CFR**

1809 ..... 72327
1850 ..... 72328
1852 ..... 72328

**50 CFR**

**Proposed Rules:**

635 (2 documents) ..... 72382, 72383
679 ..... 72384

# Rules and Regulations

Federal Register

Vol. 76, No. 226

Wednesday, November 23, 2011

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

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 284

**[Docket No. RM11–15–000; Order No. 894]**

## Bidding by Affiliates in Open Seasons for Pipeline Capacity

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Final rule.

**SUMMARY:** In this Final Rule, the Federal Energy Regulatory Commission revises its regulations governing interstate natural gas pipelines to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission does not find it necessary to adopt its proposal in the Notice of Proposed Rulemaking that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity.

**DATES:** *Effective Date:* This rule will become effective December 23, 2011.

**FOR FURTHER INFORMATION CONTACT:**

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Michael Strzelecki, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. *Michael.Strzelecki@ferc.gov.* (202) 502–6075.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

| | Paragraph No. |
|---|---|
| I. Background | 2 |
| II. Need for the Rule | 9 |
| III. Prohibition on Multiple Affiliate Bidding in Open Seasons for Pipeline Capacity | 13 |
| IV. Prohibition on Release of Capacity | 27 |
| V. Information Collection Statement | 35 |
| VI. Environmental Analysis | 36 |
| VII. Regulatory Flexibility Act | 37 |
| VIII. Document Availability | 39 |
| IX. Effective Date and Congressional Notification | 42 |

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

(Issued November 17, 2011)

1. In this Final Rule, the Commission revises its Part 284 regulations governing interstate natural gas pipelines to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission does not find it necessary to adopt its proposal in the Notice of Proposed Rulemaking [1] that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity.

## I. Background

### *A. Open Seasons for Pipeline Capacity*

2. The Commission's policy under the Natural Gas Act (NGA) [2] is to allocate available interstate pipeline capacity to the shipper that values it the most, up to the maximum rate.[3] In furtherance of this goal, the Commission favors the use of open seasons to allocate capacity and permits but does not require a net present value (NPV) evaluation as a tool for determining the highest valued use.[4]

3. Some pipelines hold open seasons to alert shippers to the availability of capacity on the pipeline and allow the shippers to bid for available capacity. The pipeline's open season process is an open and transparent procedure that is set forth in the pipeline's tariff. The pipeline notifies shippers of the availability of capacity by posting an open season notice on its EBB and/or Web site for the available capacity. During the open season, the Commission requires pipelines to sell all available capacity to shippers willing to pay the pipeline's maximum recourse rate.[5]

[1] *Bidding by Affiliates in Open Seasons for Pipeline Capacity,* 76 FR 20571 (Apr. 13, 2011), FERC Stats. and Regs. ¶ 32,673 (2011) (NOPR).

[2] 15 U.S.C. 717 *et al.* (2006).

[3] *N. Natural Gas Co.,* 108 FERC ¶ 61,044, at P 11 (2004); *Texican N. La. Transport, LLC* v. *Southern Natural Gas Co.,* 129 FERC ¶ 61,270, at P 70 (2009) (Texican I), *order on reh'g,* 132 FERC ¶ 61,167, at P 23, 26 (2010) (*Texican II*).

[4] *Texican II,* 132 FERC ¶ 61,167 at P 26.

[5] *Promotion of a More Efficient Capacity Release Market,* Notice of Proposed Rulemaking, 72 FR 65916 (Nov. 26, 2007), FERC Stats. & Regs. ¶ 32,625, at P 40 (2007) (citing *Tenn. Gas Pipeline Co.,* 91

Continued

4. NPV is a method for awarding capacity from the bids received during the open season.[6] NPV is a standard method of evaluating bids for capacity by using the time value of money to determine the present value of a time series of discounted cash flows.[7] The highest bidder, based on the NPV of the bid, receives the capacity. Factors determining NPV are price, volume of gas, and duration of the contract. The Commission has stated that a ''net present value evaluation * * * allocates capacity to the shipper who will produce the greatest revenue and the least unsubscribed capacity. As such, it is an economically efficient way of allocating capacity and is consistent with Commission policy.''[8]

5. In the event that there is not sufficient capacity to meet all equal maximum bids, pipelines apply a tiebreaker mechanism. One such mechanism is the *pro rata* allocation methodology. Under a *pro rata* allocation tiebreaker mechanism, in the event that there is not sufficient capacity to meet all qualifying bids, the capacity is allocated *pro rata, i.e.,* based on the ratio of each shipper's respective nomination to all qualifying nominations, applied to the total available capacity.[9]

*B. The NOPR*

6. On April 7, 2011, the Commission issued the NOPR, in which it proposed to add a new section 284.15 to its regulations prohibiting multiple affiliates of the same entity from bidding in an open season for pipeline capacity conducted by any interstate pipeline providing service under subparts B and G of Part 284 of the Commission's regulations in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission also proposed that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity. The Commission proposed that, for purposes of the new regulation, the term ''affiliate'' be defined as provided in section 358.3(a)(1) and (3) of the Commission's existing regulations.[10]

7. The Commission explained that some entities had developed and applied a strategy of bidding with multiple affiliates in open seasons for available capacity in order to defeat the *pro rata* allocation tiebreaker mechanism and obtain a greater share of the available capacity than a single bidder could have acquired by itself.[11] The Commission further explained that, where the available capacity is finite, the price is capped by the pipeline's maximum tariff rate, and the tiebreaker is a *pro rata* allocation, shippers can obtain more capacity than they would be able to obtain themselves by bidding multiple affiliates to defeat the *pro rata* allocation mechanism.[12] The Commission stated that each affiliate with a maximum NPV bid could then release the capacity to a single affiliate or otherwise allow its affiliate effectively to obtain the use of the allocated capacity.[13] The Commission concluded that such gaming of the *pro rata* allocation mechanism has a chilling effect on competition and permits entities that apply a multiple affiliate bidding strategy inappropriately to gain a disproportionate share of available capacity by denying a fair distribution to all maximum rate bidders.[14]

*C. Comments*

8. Comments on the NOPR were due on May 31, 2011. Twelve parties filed comments.[15] In general, commenters support the Commission's efforts to prevent anticompetitive gaming of the *pro rata* allocation methodology. However, many commenters request that the Commission modify or clarify the proposal in various ways. We discuss the comments below in the context of reviewing each aspect of this Final Rule.

## II. Need for the Rule

*A. The NOPR*

9. In the NOPR, the Commission explained that it has come to its attention that some entities have developed and applied a strategy of bidding with multiple affiliates in open seasons for available capacity in order to defeat the *pro rata* allocation tiebreaker mechanism and obtain a greater share of the available capacity than a single bidder could acquire by itself.[16] The Commission stated that such gaming of the *pro rata* allocation mechanism has a chilling effect on competition and permits entities that apply a multiple affiliate bidding strategy inappropriately to gain a disproportionate share of available capacity by denying a fair distribution to all maximum rate bidders. The Commission also recognized that multiple affiliate bidding behavior frustrates the Commission's policy of allocating capacity to the shipper that values it the most. Finally, the Commission stated that the proposed rule would provide clear notice to parties of prohibited behavior.

*B. Comments*

10. CPC contends that the proposed prohibition on multiple affiliate bidding is unnecessary because the Commission has clearly articulated its policy and there is an enforcement mechanism in place to ensure compliance. CPC explains that if multiple affiliates are awarded capacity to the detriment of a third party, that third party may contact the Commission's enforcement staff. All other commenters support adoption of a regulation clarifying the Commission's rules concerning affiliate participation

FERC ¶ 61,053 (2000), *reh'g denied,* 94 FERC ¶ 61,097 (2001), *petitions for review denied sub nom., Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 837 (DC Cir. 2002)).

[6] NPV is not the only method a pipeline could use. Another is the ''first come-first served'' approach, where the first shipper to submit a qualifying bid receives the capacity.

[7] *Saltville Gas Storage Co., L.L.C.,* 128 FERC ¶ 61,257, at P 2 n.3 (2009).

[8] *Tenn. Gas Pipeline Co.,* 76 FERC ¶ 61,101, at 61,522 (1996), *order on reh'g,* 79 FERC ¶ 61,297 (1997), *order on reh'g,* 82 FERC ¶ 61,008 (1998), *remanded sub nom. Process Gas Consumers Group* v. *FERC,* 177 F.3d 995 (DC Cir. 1999), *order on compliance,* 91 FERC ¶ 61,333 (2000), *order on remand,* 91 FERC ¶ 61,053 (2000), *reh'g denied,* 94 FERC ¶ 61,097 (2001), *petitions for review denied sub nom. Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 837 (DC Cir. 2002).

[9] An alternative tiebreaker mechanism for multiple maximum bids is to award the capacity to the earliest applicant. The Commission has stated that ''no single tiebreaker method is definitely better than other methods; each system has advantages and disadvantages * * *. So long as its method is reasonable [a pipeline] may choose any method it wishes for inclusion as the default tiebreaker in its tariff.'' *Trailblazer Pipeline Co.,* 103 FERC ¶ 61,225, at 61,869 (2003), *order on reh'g and compliance filing,* 108 FERC ¶ 61,049, at 61,305 (2004).

[10] 18 CFR 358.3(a)(1), (3) (2010). Section 358.3(a)(1) provides that an affiliate of a specified entity is ''another person that controls, is controlled by or is under common control with, the specified entity. An affiliate includes a division of the specified entity that operates as a functional unit.'' Section 358.3(a)(3) defines the term ''control.''

[11] NOPR, FERC Stats. & Regs. ¶ 32,673 at P 6.

[12] *Id.*

[13] *Id.* P 7.

[14] *Id.*

[15] Comments were filed by American Gas Association (AGA); Capital Power Corporation (Capital Power); Southern Company Services, Inc. (SCS); DTE Energy Company (DTE Energy); Process Gas Consumers Group (PGC); Atmos Energy Marketing, LLC (AEM); American Public Gas Association (APGA); Natural Gas Supply Association (NGSA); Interstate Natural Gas Association of America (INGAA); National Energy Marketers Association (NEM); Sequent Energy Management, L.P. (Sequent); and Seminole Energy Services, LLC (Seminole).

[16] NOPR at P 6–8 (citing *Tenaska Marketing Ventures, et al.,* 126 FERC ¶ 61,040 (2009) (order approving stipulations and agreements). *See also Trailblazer Pipeline Co.,* 101 FERC ¶ 61,405 (2002), *order on technical conference and denying reh'g,* 103 FERC ¶ 61,225 (2003), *order on reh'g and compliance filing,* 108 FERC ¶ 61,049 (2004)).

in open seasons for pipeline capacity, although most commenters request modifications to the specific regulation proposed in the NOPR.

*C. Commission Determination*

11. In the Commission's view, amendments to our existing regulations are necessary to prevent an entity from using multiple affiliates to secure a larger allocation of capacity than it could acquire by itself. Under conditions where the available capacity is limited and the value of the capacity is high, shippers are strongly motivated to obtain as much of that valuable capacity as possible in order to take advantage of the opportunity for profit. Where the available capacity is finite, the price is capped by the pipeline's maximum tariff rate, and the tiebreaker is a *pro rata* allocation, shippers can obtain more capacity than they would be able to obtain by themselves by bidding multiple affiliates to defeat the *pro rata* allocation mechanism. Such gaming of the *pro rata* allocation mechanism has the effect of harming entities that submit only one bid, and by extension, harming their customers, and has a chilling effect on competition.

12. While the Commission has recently addressed the issue of multiple affiliate bidding, the Commission believes that further regulatory action is necessary. In the Commission's view, amendments to the existing regulations are needed to provide clear notice to parties participating in open seasons for interstate pipeline capacity that multiple affiliate bidding is prohibited, unless a participating affiliate has its own independent business reason for submitting a bid. Clarification of the prohibited behavior should facilitate compliance with the prohibition. Entities may contact the Commission's enforcement staff in the case of a possible violation.

## III. Prohibition on Multiple Affiliate Bidding in Open Seasons for Pipeline Capacity

*A. The NOPR*

13. In the NOPR, the Commission proposed to revise its regulations governing interstate natural gas pipelines to prohibit multiple affiliates of the same entity from bidding in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. The Commission stated that this proposed rule is designed to ensure that an entity cannot use multiple affiliates solely to secure a larger allocation of capacity than it could acquire by itself.[17] The Commission explained that multiple affiliate bidding lessens competition because other bidders not engaging in similar conduct will receive less capacity—not because such bidders value the capacity any less, but because they bid only through the unit of the company intending to use the capacity or because they did not have multiple affiliates.[18]

14. The Commission recognized that not all multiple affiliate bidding is used to defeat a *pro rata* allocation mechanism, and that in some cases, affiliates may have independent business reasons for submitting their bids.[19] However, the Commission stated that it is impossible to describe in advance every situation that demonstrates an independent business reason.[20] Therefore, the Commission provided two scenarios designed to be illustrative of situations in which a business unit uses awarded capacity to serve its own customers or otherwise acts consistently with its business plan, interests, and obligations.[21] The Commission further stated that indications that a company is not acting independently would be if the business unit is used by its parent or affiliate in a way that differs from its usual business operations, is used to perform transactions that an affiliate or parent could not, or is acting as an ''alter ego'' of an affiliate or parent.

*B. Comments*

15. Parties generally support the Commission's proposed prohibition on multiple affiliate bidding. These parties agree that the Commission's proposal should provide clarity to its policies and help to prevent anticompetitive gaming of the *pro rata* allocation methodology.

16. Certain parties express concerns over the scope and specific elements of the proposed prohibition. CPC argues that the prohibition is not reasonably tailored to meet the Commission's goals because the rule would affect virtually every open season, whether or not capacity is constrained or whether or not any other prospective shipper is denied access to capacity. Some parties assert that the Commission should provide more detailed, objective criteria as to what constitutes an ''independent business reason'' that would allow affiliated entities to bid on constrained capacity, or create safe harbors or a bright-line test for what constitutes an ''independent business reason.'' For example, NGSA suggests that criteria might include whether the prospective affiliated shippers each had separate contracts to purchase or supply gas; whether the capacity was bid for in conjunction with a distinct retail provider obligation, internal use, or specific new supply project; or whether affiliates bidding operate out of different geographic locations or countries.

17. AGA argues that the proposed rule would burden participation in pipeline open seasons because every market participant with affiliates would be required to document an independent business reason each time it bids. AGA states that the potential number of affiliates could be expansive, and that in many cases a market participant would have no way of knowing whether some of its affiliates intended to or did submit a bid in the same pipeline season. AGA suggests that the Commission modify proposed section 284.15(a) to focus narrowly on the conduct that is considered manipulative by prohibiting participation in an open season ''for the purpose of obtaining a larger allocation of capacity for one affiliate than that affiliate could acquire for itself,'' and not tying the prohibition to the absence of an independent business reason for participation in the open season.

18. AGA further requests clarification that entities that operate in multiple jurisdictions either as affiliated entities or a single corporate entity with multiple operative divisions may submit multiple bids on behalf of two or more affiliates or divisions where each affiliate or division has its own need for the capacity. SCS requests clarification that its practice of acting as agent for its affiliates by submitting one bid for the total capacity needed by its affiliates would not trigger the proposed prohibition on multiple affiliate bidding. INGAA requests that the Commission clarify that pipelines are not required to determine whether open season bidders or releasing shippers are affiliated or whether bidders have independent business reasons for their bids.

19. APGA suggests that, if affiliates of the same entity participate in an open season for pipeline capacity, each be required to identify itself as such in its bid and that any award of open season

[17] *Id.* P 14.

[18] *Id.* P 9.

[19] *Id.* P 11.

[20] *Id.* P 13.

[21] ''For example, a marketing arm of an energy company may bid to secure capacity for its wholesale customers and a retail operation of the same company may bid to secure capacity to serve its retail customers, and each would have an independent business reason for its bid. Or a marketing company may have two or more affiliates operating in different geographic areas, thus serving distinct markets all of which may be served by transportation on the same pipeline. When affiliates bid in such cases, other bidders are not unduly harmed, undue discrimination is not practiced, and Commission policy is not violated.'' *Id.* P 11.

capacity likewise note that fact. APGA asserts that an affiliation between entities may not be self-evident from the name of the entity, and this would put the public on notice that the rule is applicable and must be satisfied.

20. Finally, DTE Energy argues that the Commission should exempt traditional gas and electric utilities from the definition of ''affiliate'' used in the NOPR, as state public service commission review of these utilities' activities provides sufficient protection against manipulative practices.

*C. Commission Determination*

21. In this Final Rule, the Commission adopts section 284.15(a) as proposed in the NOPR. The Commission finds that it is appropriate to prohibit multiple affiliates of the same entity from participating in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid. This prohibition will help to prevent shippers from using multiple affiliates to defeat the *pro rata* allocation tiebreaker mechanism and obtain a greater share of available capacity than a single bidder could acquire by itself.

22. As recognized in the NOPR, not all multiple affiliate bidding is used to defeat a *pro rata* allocation mechanism. Therefore, section 284.15(a) provides an exception for affiliates that have independent business reasons for submitting their bids. For example, a marketing arm of an energy company may bid to secure capacity for its wholesale customers and a retail operation of the same company may bid to secure capacity to serve its retail customers, and each would have an independent business reason for its bid. Or a marketing company may have two or more affiliates operating in different geographic areas, thus serving distinct markets all of which may be served by transportation on the same pipeline. The prohibition against multiple affiliate bidding in section 284.15(a) is reasonably tailored to the harm the Commission is seeking to prevent, as it only restricts the participation of affiliates that do not have an independent business reason for bidding.

23. Various commenters request further clarification of what constitutes an independent business reason. As the Commission explained in the NOPR, it is impossible to describe in advance every situation that demonstrates an independent business reason. However, our intent in permitting bidding by multiple affiliates where each has its own independent business reason for bidding is to allow each affiliate to acquire capacity which will facilitate or enhance its ability to provide service of value to its own customers or otherwise help accomplish its own business goals. The phrase ''independent business reason'' should be interpreted and applied in specific situations consistent with that intent.

24. The scenarios described in P 22 above illustrate situations where each affiliate or business unit has an independent business reason to participate in an open season, because each is seeking pipeline capacity in order to transport natural gas to its own sales customers. Commenters have suggested various other scenarios in which an affiliate or business unit may use awarded capacity to accomplish its own business objectives and thus have an independent business reason for participating in an open season. For example, an affiliate may use natural gas to operate an industrial plant, refinery, or electric generation facility, and seek pipeline capacity to transport natural gas to that facility.[22] A producer affiliate may be developing a new production field and seek pipeline capacity to transport natural gas produced from that field to market.[23] A marketer affiliate participating in a retail access program may seek pipeline capacity to serve its retail customers in that program.[24] A marketer affiliate may also seek pipeline capacity to transport natural gas to any other type of customer to whom it ordinarily sells natural gas. In all of these scenarios, the affiliate or business unit is seeking pipeline capacity to transport natural gas which it will consume in its own business operations or sell to others as part of its ordinary course of business. In such circumstances, the affiliate may participate in an open season, regardless of whether any other affiliate may participate in the same open season.[25] By contrast, indications that a company is not acting independently would be if the business unit is used by its parent or affiliate in a way that differs from its usual business operations, is used to perform transactions that an affiliate or parent could not, or is acting as an ''alter ego'' of an affiliate or parent.

25. AGA argues that the proposed rule would burden participation in pipeline open seasons because each market participant would be required to document an independent business reason each time it bids and would have no way of knowing whether some of its affiliates submitted a bid. We disagree. First, the rule requires an affiliate to do no more than any reasonably prudent company would do when considering whether to bid in an open season for pipeline capacity. Before submitting a bid, the affiliate must decide whether and how much of the subject capacity it needs in order to accomplish its own business objectives, and it should maintain some record of the basis for its determination. The rule does not include any specific documentation requirement. Second, each affiliate only need concern itself with whether it, individually, has an independent business reason for bidding. The rule does not require that an entity coordinate with its affiliates to establish how its independent business reason differs from the business reasons of the other affiliates. In fact, not coordinating with affiliates would help to avoid the appearance of multiple affiliate bidding behavior. Similarly, if state public service commission review prevents gas and electric utilities from acquiring gas transportation for purposes not related to serving customers, as DTE Energy asserts, then it should not be burdensome for these entities to establish an independent business purpose. We therefore do not find it necessary to modify proposed section 284.15(a) or the proposed definition of ''affiliate.''

26. We do not find it necessary to require that each affiliate identify itself as such and that any award of open season capacity note the affiliation. In order for multiple affiliates of the same entity to participate in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, each affiliate must have an independent business reason for submitting a bid. Therefore, consumers should be protected by the rule even if each affiliate is not labeled as such. We also note that each affiliate has the responsibility to ensure that it has an independent business reason for submitting a bid, not the pipeline conducting the open season.

## IV. Prohibition on Release of Capacity

*A. The NOPR*

27. The Commission also proposed that if more than one affiliate of the same entity participates in such an open season, then none of those affiliates may

[22] NGSA at 4; PGC at 3; AGA at 7.

[23] NGSA at 4.

[24] *Id.*

[25] As requested by SCS and AGA, the Commission also clarifies that a group of affiliated electric generators or gas distribution companies operating in different geographic areas may designate a single affiliate as their gas purchasing agent and that affiliate may participate in an open season to obtain pipeline capacity to serve all the affiliates in the group.

release any capacity obtained in that open season pursuant to a *pro rata* allocation to any affiliate, or otherwise allow any affiliate to obtain the use of the allowed capacity. The Commission noted that some companies bidding with multiple affiliates have used capacity release as the final step in consolidating multiple shares of capacity for use by one of the company's units.[26] The Commission explained that, by releasing the capacity acquired in the open season, affiliates are able to transfer the capacity each acquires to a single company that benefits by obtaining more capacity than it could have obtained by itself.[27]

*B. Comments*

28. Parties generally argue that the capacity release prohibition, as drafted, is overbroad and would have a chilling effect on the capacity release markets. For example, AGA argues that where an affiliate complies with section 284.15(a) and legitimately obtains capacity in an open season with a *pro rata* allocation, that affiliate should be permitted to release its capacity to any entity under the normal capacity release rules applicable to all other shippers. It argues that this is especially the case if the releasing affiliate posts the release for bidding and has no control over who might acquire the released capacity. AGA further states that, if the proposed capacity release prohibition is adopted, an affiliate legitimately obtaining capacity in an open season may be reluctant to offer capacity to the release market for fear that an affiliate would be the winning bidder for the capacity.

29. Parties argue that, if the prohibition on capacity release is adopted, various clarifications are required. For example, AGA argues that the Commission should clarify that the prohibition on capacity release only applies where the affiliate cannot establish an independent business reason for bidding, and that, if an entity with multiple affiliates acquires capacity in an open season with a *pro rata* allocation and releases that capacity in a competitive bidding process where the winning bidder is an unaffiliated third party, an affiliate could subsequently acquire the capacity from that party. CPC proposes alternative language to the proposed regulation that would clarify that a ban on capacity release (1) Only applies to the extent two affiliates actually receive a *pro rata* award of capacity, and (2) expires after a reasonable period, such as two years. Numerous parties state that the Commission should clarify that the prohibition on capacity release does not apply to releases of pipeline capacity to (1) Qualifying asset managers as part of an Asset Management Agreement or (2) marketers participating in a state commission-regulated retail access program. PGC urges the Commission to recognize that, if industrial end-users decide to realign their natural gas purchasing and transportation practices to central management in order to maximize corporate efficiencies, capacity releases between affiliates may be required.

30. Parties also express concern that seeking waiver of the capacity release prohibition would be overly burdensome.

*C. Commission Determination*

31. In light of the comments received, the Commission has reconsidered its proposal and has decided not to adopt the proposed prohibition on capacity release. The prohibition on capacity release, proposed as section 284.15(b) in the NOPR, was intended to provide an additional deterrent to affiliates bidding for capacity for which they have no independent use. However, any behavior that the Commission intended to fall under the capacity release prohibition is covered by the prohibition on multiple affiliate bidding in proposed section 284.15(a). Therefore, the Commission believes that the prohibition on multiple affiliate bidding in proposed section 284.15(a) is sufficient to prohibit the subject conduct without the additional capacity release prohibition.

32. Furthermore, we appreciate commenters' concern that the capacity release prohibition could have a chilling effect on affiliates' participation in the capacity release markets. The Commission adopted the capacity release program in order to promote efficient use of firm pipeline capacity throughout the year.[28] For example, the capacity release program permits a firm shipper to release its capacity to another shipper during periods when the release shipper does not need its capacity. This allows the releasing shipper to reduce its cost of reserving capacity and enables other shippers who value the capacity more to use it.

33. Upon further consideration, the Commission has determined that an affiliate who legitimately obtains capacity in an open season for its own independent business purposes should be permitted to release that capacity to any entity under the normal capacity release rules applicable to all other shippers. This will enable affiliates to obtain the same benefits from capacity release as other shippers. We note, however, that the Commission may consider what an entity does with its awarded capacity, such as subsequently releasing the capacity to an affiliate on a long-term basis, as a factor in the determination of whether the entity in fact had an independent business reason to obtain the capacity.

34. The Commission will therefore promulgate the Final Rule without the prohibition on capacity release. This Final Rule, as amended, should prevent anticompetitive gaming of the *pro rata* allocation methodology by using multiple affiliates of the same entity to acquire a larger share of the available capacity than one affiliate would be able to acquire by itself.

## V. Information Collection Statement

35. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[29] This rule contains no new or revised information collections. Therefore, OMB review of this Final Rule is not required.

## VI. Environmental Analysis

36. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[30] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[31] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[32] Therefore an environmental review is

[26] NOPR, FERC Stats. & Regs. ¶ 32,673 at P 15 (citing *Tenaska Marketing Ventures, et al.,* 126 FERC ¶ 61,040 at P 13, 18).

[27] *Id.*

[28] *Promotion of a More Efficient Capacity Release Market,* Order No. 712, 73 FR 37058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271, at P 4 (2008), *order on reh'g,* Order No. 712–A, 73 FR 72692 (Dec. 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008), *order on reh'g,* Order No. 712–B, 74 FR 18127 (Apr. 21, 2009), 127 FERC ¶ 61,051 (2009).

[29] 5 CFR 1320.11 (2011).

[30] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[31] 18 CFR 380.4 (2011).

[32] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27) (2011).

unnecessary and has not been prepared in this rulemaking.

**VII. Regulatory Flexibility Act**

37. The Regulatory Flexibility Act of 1980 (RFA) [33] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.[34] Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[35]

38. This Final Rule should have no significant negative impact on those entities, be they large or small, subject to the Commission's regulatory jurisdiction under the NGA. Most companies to which the Final Rule applies do not fall within the RFA's definition of small entities. In addition, this Final Rule is only triggered if more than one affiliate of the same entity participates in an open season for pipeline capacity in which the pipeline may allocate capacity on a *pro rata* basis, and each affiliate does not have an independent business reason for submitting a bid. Therefore, the rule would only affect a limited number of small entities. This Final Rule will not have a significant economic effect on these small entities. Therefore, the Commission certifies that this Final Rule will not have a significant economic effect on a substantial number of small entities.

**VIII. Document Availability**

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

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

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

**IX. Effective Date and Congressional Notification**

42. These regulations are effective December 23, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

**List of Subjects in 18 CFR Part 284**

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission. Commissioner Spitzer is not participating.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

In consideration of the foregoing, the Commission amends part 284, Chapter I, Title 18, Code of Federal Regulations, as follows:

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 2. Section 284.15 is added to subpart A to read as follows.

**§ 284.15 Bidding by affiliates in open seasons for pipeline capacity.**

(a) Multiple affiliates of the same entity may not participate in an open season for pipeline capacity conducted by any interstate pipeline providing service under subparts B and G of this part, in which the pipeline may allocate capacity on a *pro rata* basis, unless each affiliate has an independent business reason for submitting a bid.

(b) For purposes of this section, an affiliate is any person that satisfies the definition of affiliate in § 358.3(a)(1) and (3) of this chapter with respect to another entity participating in an open season subject to paragraph (a) of this section.

[FR Doc. 2011–30115 Filed 11–22–11; 8:45 am]

BILLING CODE 6717–01–P

[33] 5 U.S.C. 601–612 (2006).

[34] 5 U.S.C. 605(b) (2006).

[35] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 623 (2006)). Section 3 defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 200

**[Docket No. FR–5458–F–02]**

**RIN 2502–AI96**

## Federal Housing Administration (FHA) Appraiser Roster: Appraiser Qualifications for Placement on the FHA Appraiser Roster

**AGENCY:** Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** On July 14, 2011, HUD published a proposed rule to update HUD's regulations to conform to the statutory requirement that appraisers must be certified, rather than licensed, by a state appraisal licensing board in order to appear on the FHA Appraiser Roster. This requirement was established by the Housing and Economic Recovery Act of 2008. Although current HUD practice is in compliance with the statutory mandate, the regulations reflect outdated prior policy of permitting state-licensed appraisers to be listed on the FHA Appraiser Roster. In addition, HUD proposed updating the FHA Appraiser Roster regulations by replacing the obsolete references to the Credit Alert Interactive Voice Response System (CAIVRS) with references to its successor, the online-based Credit Alert Verification Reporting System. This final rule follows the publication of the July 14, 2011, proposed rule. In this final rule, HUD is adopting the proposed rule without change. HUD did not receive any public comments on the proposed rule.

**DATES:** *Effective Date:* December 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Karin Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410–8000; telephone number (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1 (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background—The Proposed Rule

On July 14, 2011, HUD published a proposed rule in the **Federal Register** (76 FR 41441) designed to make FHA's Appraiser Roster regulations regarding eligibility requirements of appraisers to qualify for placement and retention on the Appraiser Roster consistent with both the mandate of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) (HERA) that all FHA-approved appraisers be state-certified and HUD's current policy regarding state-certification of appraisers as set forth in Mortgagee Letter (ML) 2008–39, published December 17, 2008.

Under HUD's current regulation in 24 CFR 200.202(b), an applicant who wishes to be included on the FHA Appraiser Roster must, among other things, be a state-licensed or state-certified appraiser. Section 1404 of the HERA amended section 202 of the National Housing Act (12 U.S.C. 1708) to mandate that all appraisers chosen or approved to conduct appraisals of properties that will be security for FHA-insured mortgages must be ''certified'': (1) By the state in which the property to be appraised is located, or by a nationally recognized professional appraisal organization; *and* (2) have demonstrated verifiable education in the appraisal requirements established by FHA. Under amended section 202(g) of the National Housing Act, licensed appraisers are no longer authorized to conduct appraisals of properties securing an FHA-insured mortgage.

In order to comply with HERA's requirements governing who qualifies as an FHA-approved appraiser, and in order to implement this change in appraiser eligibility requirements in a manner that was not disruptive to the FHA mortgage lending process, ML 2008–39, issued by FHA on December 17, 2008, provided a deadline of October 1, 2009, for all FHA appraisers on the Appraisal Roster to become state-certified and indicated that FHA had ceased to accept applications by state-licensed appraisers on October 1, 2008, in order to comply with HERA.[1]

In addition, HERA provides that appraisers may either be state-certified or certified by a ''nationally recognized professional appraisal organization'' in order to appear on the Roster. However, in the proposed rule, HUD stated that in order to prevent disruption and to ensure efficient processing of mortgage insurance, HUD will accept only state certification and not the certification of a ''nationally recognized professional appraisal organization.'' HUD determined that state certification sufficiently accomplishes the statutory purpose of ensuring higher quality appraisals.

HUD took the opportunity in the proposed rule to propose the elimination references to the Credit Alert Interactive Voice Response System (CAIVRS). On July 11, 2008, HUD issued ML 2008–18, stating that HUD was discontinuing telephone access to CAIVRS because the hardware supporting the telephone access was obsolete and could no longer be repaired or maintained. Access to CAIVRS is now available solely through the Internet, and CAIVRS is now known as the Credit Alert Verification Reporting System, although the acronym remains the same.

## II. This Final Rule

This final rule follows publication of the July 14, 2011, proposed rule. The proposed rule provided for a 60-day public comment period. The public comment period for the proposed rule closed on September 12, 2011, and HUD did not receive any public comments. Accordingly, HUD is adopting the proposed rule without change.

In order to make the Appraiser Roster regulations consistent with current statute, this final rule removes all references to state licensing and state-licensed appraisers from the regulations in § 200.202 and § 200.204. This final rule also eliminates the reference to the Credit Alert Interactive Voice Response System in § 200.202. Because the Credit Alert Interactive Voice Response System no longer exists, the phrase has been replaced with ''Credit Alert Verification Reporting System,'' the new appraiser alert system put in place by ML 2008–18. Interested readers are referred to the preamble of the July 14, 2011, proposed rule, found at 76 FR 41441, for additional background information.

## III. Findings and Certifications

*Paperwork Reduction Act*

The information collection requirements for this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0538. 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.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (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.

This final rule would not add any new regulatory burdens on FHA-approved appraisers or applicants for FHA approval. HERA requires that an appraiser be state-certified to be approved by FHA to be on the Appraiser Roster. HUD ceased accepting applications from state-licensed appraisers on October 1, 2008, and all appraisers already on the Appraiser Roster must have become state-certified by October 1, 2009, to remain on the Appraiser Roster. This final rule will not create new costs for small entities of appraisers or of lenders, because the rule does not impose any new requirements on appraisers. In addition, FHA's Appraiser Roster pertains solely to individuals, not to entities. Individual appraisers must apply to be on the FHA Appraiser Roster. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would 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 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or Tribal governments, or on the private sector, within the meaning of UMRA.

*Environmental Impact*

This final rule does not direct, provide for assistance or loan and

[1] Copies of the mortgagee letters referenced in this final rule may be downloaded from *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/.*

mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Catalogue of Federal Domestic Assistance*

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

**List of Subjects in 24 CFR Part 200**

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble, 24 CFR part 200 is amended to read as follows:

## PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1702–1715–z–21; 42 U.S.C. 3535(d).

■ 2. In § 200.202, revise paragraphs (b)(1) and (b)(2)(iii) as follows:

### § 200.202 How do I apply for placement on the Appraiser Roster?

* * * * *

(b) * * *

(1) You must be a state-certified appraiser with credentials that complied with the applicable certification criteria established by the Appraiser Qualification Board (AQB) of the Appraisal Foundation and in effect at the time the certification was awarded by the issuing jurisdiction; and

(2) * * *

(iii) HUD's Credit Alert Verification Reporting System.

■ 3. In § 200.204, revise paragraphs (a)(1)(ii), (c)(1) and (2) as follows:

### § 200.204 What actions may HUD take against unsatisfactory appraisers on the Appraiser Roster?

* * * * *

(a) * * *

(1) * * *

(ii) Losing standing as a state-certified appraiser due to disciplinary action in any state in which the appraiser is certified;

* * * * *

(c) * * *

(1) *Appraisers subject to state disciplinary action.* An appraiser whose state certification in any state has been revoked, suspended, or surrendered as a result of a state disciplinary action is automatically suspended from the Appraiser Roster and prohibited from conducting FHA appraisals in any state until HUD receives evidence demonstrating that the state-imposed sanction has been lifted.

(2) *Expirations not due to state disciplinary action.* An appraiser whose certification in a state has expired is automatically suspended from the Appraiser Roster in that state and may not conduct FHA appraisals in that state until HUD receives evidence that demonstrates renewal, but may continue to perform FHA appraisals in other states in which the appraiser is certified.

* * * * *

Dated: November 16, 2011.

**Carol J. Galante,**

*Acting Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2011–30266 Filed 11–22–11; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2011–1039]**

## Drawbridge Operation Regulation; Upper Mississippi River, Dubuque, IA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Illinois Central Railroad Drawbridge across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. Maintenance is scheduled in the winter when there is less impact on navigation; instead of scheduling work in the summer, when river traffic increases. This deviation allows the bridge to open on signal if at least 24-hours advance notice is given.

**DATES:** This deviation is effective from 12:01 a.m., December 19, 2011 to 7 a.m., February 27, 2012.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1039 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1039 in the ''Keyword'' box and then clicking ''Search''. They are also 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone (314) 269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** The Chicago, Central & Pacific Railroad requested a temporary deviation for the Illinois Central Railroad Drawbridge, across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa to open on signal if at least 24-hours advance notice is given for 70 days from 12:01 a.m., December 19, 2011 to 7 a.m., February 27, 2012 to allow the bridge owner time for preventive maintenance. The Rock Illinois Central Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that the drawbridge shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No 16 (Mile 457.2 UMR), Lock No. 17 (Mile 437.1 UMR) and Lock No. 18 (Mile 410.5 UMR) until 7:30 p.m., February 28, 2012 will preclude any significant navigation demands for a drawspan opening.

The Illinois Central Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 19.9 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will open if

at least 24-hours advance notice is given. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: November 4, 2011.

**Eric A. Washburn,**

*Bridge Administrator, Western Rivers.*

[FR Doc. 2011–30288 Filed 11–22–11; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2011–1050]**

## Drawbridge Operation Regulations; Chelsea River, Chelsea and East Boston, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the new Chelsea Street Bridge across the Chelsea River, mile 1.2, between Chelsea and East Boston, Massachusetts. The recently installed new vertical lift bridge span will undergo testing for three weeks. This deviation requires a four hour advance notice for bridge openings during the lift span test period.

**DATES:** This deviation is effective from 7 a.m. on November 12, 2011 through 11 a.m. on December 3, 2011.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1050 and are available online at *http://www.regulations.gov,* inserting USCG–2011–1050 in the ''Keyword'' and then clicking ''Search''. They are also 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223–8364, *john.w.mcdonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** The Chelsea Street Bridge, across the Chelsea River, mile 1.2, between Chelsea and East Boston, Massachusetts, has a vertical clearance in the closed position of 7 feet above mean high water and 17 feet above mean low water, and 175 feet above mean high water in the full open position. The bridge opens on signal at all times as required by 33 CFR 117.593.

The waterway is transited predominantly by commercial operators delivering petroleum products to facilities located upstream from the new bridge.

The lift span at the new bridge will be operated by the contractor, J.F. White Company, for testing from 7 a.m. on November 12, 2011 through 11 a.m. on December 3, 2011. At least a four hour advance notice shall be required for bridge openings during the above test period. Requests to open the bridge may be made by calling J.F. White Company at (617) 590–1286 or (617) 799–2913 or by VHF FM marine radio channel 13 and 16.

The waterway users and upstream oil facilities, were all advised regarding the four hour advance notice requirement. No objections were received.

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

Dated: November 10, 2011.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

[FR Doc. 2011–30187 Filed 11–22–11; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2011–0974]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Neuse River, New Bern, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing the existing drawbridge operation regulation for the U.S. 17 bridge across Neuse River, mile 33.7 at New Bern, NC. The drawbridge was replaced with a fixed bridge in 1999. Therefore, the operating regulation pertaining to the U.S. 17 drawbridge is no longer applicable or necessary.

**DATES:** This rule is effective November 23, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0974 and are available by going to *http://www.regulations.gov,* inserting USCG–2011–0974 in the ''Keyword'' box, and then clicking ''Search.'' This material is also 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lindsey Middleton, Bridge Management Specialist, Coast Guard; telephone (757) 398–6629, email *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the U.S. 17 bridge requiring the draw operating regulation at 33 CFR 117.824(a), was removed and replaced with a fixed bridge in 1999. The bridge operator and those transiting in the vicinity of this bridge have not been subject to the enforcement of this regulation since the bridge was removed and replaced with a fixed bridge. Therefore, the regulation is no longer applicable and shall be removed from publication. A Notice of Proposed Rulemaking (NPRM) is unnecessary because the Coast Guard is removing an unneeded regulation that has no further practical value and

governs a drawbridge that no longer exists. It is unnecessary to publish an NPRM because operators transiting this portion of the waterway are aware that the bridge is now a fixed bridge. Further, it is unnecessary to publish an NPRM because this regulation does not purport to place any restriction on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the U.S. 17 draw operation requirements under 33 CFR 117.824(a), thus removing a regulatory restriction on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register.** The bridge has been a fixed bridge for twelve years and this final rule merely requires an administrative change to the **Federal Register**, in order to omit a regulatory requirement that is no longer applicable or necessary.

**Basis and Purpose**

The drawbridge across Neuse River, mile 33.7, at New Bern, NC was removed and replaced with a fixed bridge in 1999. It has come to the attention of the Coast Guard that the governing regulation for the drawbridge, found in 33 CFR 117.824(a), was never removed subsequent to the completion of the fixed bridge that replaced it. Therefore, this regulation seeks to remove the U.S. 17 bridge operating regulation which is no longer applicable or necessary due the present bridge being a fixed structure.

**Discussion of Rule**

The Coast Guard is changing the regulation in 33 CFR 117.824(a) by removing the restriction and the regulatory burden related to the draw operations for a drawbridge that is no longer in existence. The change removes the section of the regulation governing the operation of the U.S. 17 bridge since it has been replaced with a fixed bridge. The replacement took place in 1999, approximately twelve years ago. This Final Rule seeks to update the Code of Federal Regulations by removing language that regulates signaling and notice requirements for the opening of a bridge that no longer exists. This change does not affect waterway or land traffic. This change does not affect nor does it alter those portions of 33 CFR 117.824 dealing with the Atlantic and East Carolina Railway bridge.

**Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

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

The Coast Guard does not consider this rule to be ''significant'' under that Order because it is an administrative change and does not affect waterway or land traffic.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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.

Since this drawbridge has been removed and replaced with a fixed bridge, the regulation governing draw operations for this bridge is no longer needed. There is no new restriction or regulation being imposed by this rule therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this 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 because it is not a ''significant regulatory action'' under Executive Order 12866 and 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, it does not

require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.824 to read as follows:

**§ 117.824 Neuse River.**

The draw of the Atlantic and East Carolina Railway Bridge, mile 80.0, at Kinston shall open on signal if at least 24 hours notice is given.

Dated: November 1, 2011.

**William D. Lee,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 2011–30188 Filed 11–22–11; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 261

**[EPA–R06–RCRA–2009–0312; SW FRL–9490–9]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is granting a petition submitted by Eastman Chemical Corporation—Texas Operations (Eastman Chemical) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by Eastman Chemical to delist three waste streams generated from its rotary kiln incinerator (RKI). These waste streams are the rotary kiln incinerator (RKI) bottom ash, RKI fly ash, and RKI scrubber water blowdown. The RKI bottom ash and the RKI fly ash are derived from the management of several F-, K-, and U-waste codes. These waste codes are F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. The Scrubber water blowdown produced by the RKI's air pollution control equipment is also derived from the management of several F-, K-, and U-waste codes as well as certain characteristic hazardous wastes. These waste codes are D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. The RKI is authorized to manage a list of additional F-, K-, U-, and P-codes to cover off-site sources not attributed to the above waste codes. If these waste codes are not specifically listed in the delisting exclusion, they are not covered by the exclusion and can not be managed as non-hazardous, unless and until, the exclusion is modified to include them.

After careful analysis and evaluation of comments submitted by the public, the EPA has concluded that the petitioned wastes are not hazardous waste when disposed of in Subtitle D landfills or in the case of the scrubber water blowdown, discharged in conjunction with its TPDES discharge permit. This exclusion applies to the RKI bottom ash, RKI fly ash and RKI scrubber water blowdown generated at Eastman Chemical's Longview, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills or discharged in accordance with a TPDES permit but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

**DATES:** *Effective Date:* November 23, 2011.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is ''EPA–R06–RCRA–2009–0312''. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact Ben Banipal, at (214) 665–7324. For technical information concerning this notice, contact Michelle Peace, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–7430.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

I. Overview Information
- A. What action is EPA finalizing?
- B. Why is EPA approving this delisting?
- C. What are the limits of this exclusion?
- D. How will Eastman Chemical manage the waste if it is delisted?
- E. When is the final delisting exclusion effective?
- F. How does this final rule affect states?

II. Background
- A. What is a ''delisting''?
- B. What regulations allow facilities to delist a waste?
- C. What information must the generator supply?

III. EPA's Evaluation of the Waste Data
- A. What wastes did Eastman Chemical petition EPA to delist?

B. How much waste did Eastman Chemical propose to delist?
C. How did Eastman Chemical sample and analyze the waste data in this petition?
IV. Public Comments Received on the Proposed Exclusion
A. Who submitted comments on the proposed rule?
B. Comments and Responses
V. Statutory and Executive Order Reviews

## I. Overview Information

### *A. What action is EPA finalizing?*

The EPA is finalizing:

(1) The decision to grant Eastman's petition to have its RKI Fly ash, bottom ash and scrubber blowdown water excluded, or delisted, from the definition of a hazardous waste, subject to certain continued verification and monitoring conditions; and

(2) to use the Delisting Risk Assessment Software to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

After evaluating the petition, EPA proposed and issued a direct final rule, on September 24, 2010 to exclude the Eastman Chemical waste from the lists of hazardous wastes under §§ 261.31 and 261.32. The direct final rule received adverse comments and was subsequently withdrawn on November 1, 2010. This decision is based on the proposed rule issued on September 24, 2010. The comments received on this rulemaking will be addressed as part of this decision.

### *B. Why is EPA approving this delisting?*

Eastman's petition requests a delisting for the listed hazardous wastes associated with three waste streams. Eastman does not believe that the petitioned wastes meet the criteria for which EPA listed it. Eastman also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste were originally listed, EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet these criteria. EPA's final decision to delist waste from Eastman's facility is based on the information submitted in support of this rule, *i.e.,* descriptions of the Rotary Kiln Incinerator, and analytical data from the Longview facility.

### *C. What are the limits of this exclusion?*

This exclusion applies to the waste described in the petition only if the requirements described in Table 1, 2, and 3 of part 261, Appendix IX and the conditions contained herein are satisfied. The exclusion applies to 1,000 cubic yards per calendar year of RKI fly ash; 750 cubic yards per calendar year of RKI bottom ash; and 643,000 cubic yards (500,000 million gallons) of RKI scrubber water blowdown waste resulting from the operations of the rotary kiln incinerator at its facility.

### *D. How will Eastman Chemical manage the waste if it is delisted?*

Eastman will dispose of the fly ash and bottom ash in an onsite Subtitle D landfill. The scrubber water blowdown will be managed in the waste water treatment plant (WWTP). The sludge from the WWTP was delisted in 2000, and there are new waste codes being managed as part of this petition. See Appendix IX to Part 261, Table 1. All management occurs on-site and will remain the same after the delisting is granted.

### *E. When is the final delisting exclusion effective?*

This rule is effective November 23, 2011. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

### *F. How does this final rule affect states?*

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Eastman Chemical transports the petitioned waste to or manages the waste in any State with delisting authorization, Eastman Chemical must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

## II. Background

### *A. What is a delisting petition?*

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

### *B. What regulations allow facilities to delist a waste?*

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke

any provision of Parts 260 through 266, 268 and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists.

*C. What information must the generator supply?*

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

## III. EPA's Evaluation of the Waste Data

*A. What waste did Eastman Chemical petition EPA to delist?*

Eastman petitioned EPA on December 1, 2008, to exclude from the lists of hazardous wastes contained in §§ 261.24, 261.31, and 261.32, certain wastes from its rotary kiln incineration system. The three waste streams included in the petition were: The RKI fly ash, RKI bottom ash and RKI scrubber water blowdown.

The waste streams are generated from the Eastman facility located in Longview, Texas. The RKI fly ash and RKI bottom ash are listed under EPA Hazardous Waste No. F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. The Scrubber water blowdown produced by the RKI's air pollution control equipment is also derived from the management of several F-, K-, and U-waste codes as well as certain characteristic hazardous wastes. These waste codes are D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359. Specifically, in its petition, Eastman requested that EPA grant exclusions for 1,000 cubic yards per calendar year of RKI fly ash; 750 cubic yards per calendar year of RKI bottom ash; and 643,000 cubic yards (500,000 million gallons) of RKI scrubber water blowdown waste resulting from the operations of the rotary kiln incinerator at its facility.

Eastman intends to dispose of the delisted RKI bottom ash and RKI fly ash at a on-site Subtitle D Landfill, and the RKI scrubber water blowdown will be treated in the Wastewater Treatment Plant. Treatment of process wastes and wastes from captured facilities generate the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown that is classified as F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 listed hazardous wastes pursuant to 40 CFR 261.31 and 261.32. The 40 CFR part 261 appendix VII hazardous constituents which are the basis for listing can be found in Table 1 and Table 2.

TABLE 1—EPA WASTE CODES FOR RKI FLY AND BOTTOM ASHES AND THE BASIS FOR LISTING

| Waste code | Basis for listing |
|---|---|
| F001 | Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons. |
| F002 | Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane. |
| F003 | N.A., xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexane, methanol. |
| F005 | Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.. |
| F039 | All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under 40 CFR 268.43, Table CCW. |
| K009 | Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid. |
| K010 | Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde. |
| U001 | Acetaldehyde. |
| U002 | Acetone. |
| U028 | Bis (2-ethyl hexyl) phthalate. |
| U031 | n-Butyl alcohol. |
| U069 | Dibutyl phthalate. |
| U088 | Di-ethyl phthalate. |
| U107 | Di-n-octyl phthalate. |
| U112 | Ethyl acetate. |
| U115 | Ethylene oxide. |
| U117 | Ethane, 1,1′-oxybis-(I). |
| U122 | Formaldehyde. |
| U140 | Isobutyl alcohol. |
| U147 | Maleic anhydride. |
| U154 | Methanol. |
| U159 | Methyl ethyl ketone. |
| U161 | Methyl isobutyl ketone. |
| U213 | Tetrahydrofuran. |
| U220 | Toluene. |
| U226 | 1,1,1-Trichloroethane (methyl chloroform). |
| U239 | Xylene. |
| U359 | Ethylene glycol monoethyl ether. |

TABLE 2—EPA WASTE CODES FOR RKI SCRUBBER WATER BLOWDOWN AND THE BASIS FOR LISTING

| Waste code | Basis for listing |
|---|---|
| F001 | Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons. |

TABLE 2—EPA WASTE CODES FOR RKI SCRUBBER WATER BLOWDOWN AND THE BASIS FOR LISTING—Continued

| Waste code | Basis for listing |
|---|---|
| F002 | Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane. |
| F003 | N.A., xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexane, methanol. |
| F005 | Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane. |
| F039 | All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under 40 CFR 268.43, Table CCW. |
| K009 | Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid. |
| K010 | Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde. |
| U001 | Acetaldehyde. |
| U002 | Acetone. |
| U028 | Bis (2-ethyl hexyl) phthalate. |
| U031 | n-Butyl alcohol. |
| U069 | Dibutyl phthalate. |
| U088 | Di-ethyl phthalate. |
| U107 | Di-n-octyl phthalate. |
| U112 | Ethyl acetate. |
| U115 | Ethylene oxide. |
| U117 | Ethane, 1,1′-oxybis-(I). |
| U122 | Formaldehyde. |
| U140 | Isobutyl alcohol. |
| U147 | Maleic anhydride. |
| U154 | Methanol. |
| U159 | Methyl ethyl ketone. |
| U161 | Methyl isobutyl ketone. |
| U213 | Tetrahydrofuran. |
| U220 | Toluene. |
| U226 | 1,1,1-Trichloroethane (methyl chloroform). |
| U239 | Xylene. |
| U359 | Ethylene glycol monoethyl ether. |
| D001 | Ignitability. |
| D002 | Corrosivity. |
| D003 | Reactivity. |
| D007 | Chromium. |
| D008 | Lead. |
| D018 | Benzene. |
| D022 | Chloroform. |

*B. How much waste did Eastman Chemical propose to delist?*

Specifically, in its petition, Eastman requested that EPA grant exclusions for 1,000 cubic yards per calendar year of RKI fly ash; 750 cubic yards per calendar year of RKI bottom ash; and 643,000 cubic yards (500,000 million gallons) of RKI scrubber water blowdown waste resulting from the operations of the rotary kiln incinerator at its facility.

*C. How did Eastman Chemical sample and analyze the waste data in this petition?*

To support its petition, Eastman submitted:

1. Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for eight samples for the RKI fly ash and RKI bottom ash, and RKI scrubber water blowdown;

2. Analytical results of the total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for eight samples for the RKI scrubber water blowdown;

3. Analytical results from multiple pH leaching of metals and;

4. The comparison of the results to the maximum allowable TCLP delisting levels found in Tables 4, 5, and 6.

5. Description of the operations and waste received of the RKI.

TABLE 4—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI BOTTOM ASH [1]

| Constituent | Maximum total (mg/kg) | Maximum TCLP (mg/l) | Maximum allowable TCLP delisting level (mg/L) |
|---|---|---|---|
| Antimony | 16 | 0.062 | 0.801 |
| Acetone | 0.194 | 0.772 | 33.8 |
| Arsenic | 8.8 | 0.029 | 0.126 |
| Acetaldehyde | 1.37 | <0.0100 | 5.35 |
| Acenaphthylene | 3.5 | 0.014 | 31.9 |
| Anthracene | 1.6 | <0.0100 | 77.9 |
| Acenaphthene | 0.721 | 0.014 | 31.9 |
| Barium | 370 | 0.7 | 100 |
| Benzene | <0.170 | 0.0048 | 0.231 |
| Bis(2-ethylhexyl)phthalate | 0.23 | 0.017 | 103.0 |

TABLE 4—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI BOTTOM ASH [1]—Continued

| Constituent | Maximum total (mg/kg) | Maximum TCLP (mg/l) | Maximum allowable TCLP delisting level (mg/L) |
|---|---|---|---|
| Benzo(a) anthracene | 0.763 | < 0.0100 | 0.211 |
| Benzo(a) pyrene | 0.519 | < 0.0100 | 79.1 |
| Benzo(b) flouranthene | 0.343 | < 0.0100 | 673 |
| Bromomethane | 0.057 | < 0.0100 | 0.0526 |
| n-Butyl alcohol | 4.5 | < 0.0100 | 174 |
| Cadmium | 1.5 | 0.002 | 0.274 |
| Chromium | 14 | 0.02 | 5.0 |
| Cobalt | 31 | 0.023 | 0.643 |
| Copper | 29 | 0.048 | 73.8 |
| Chloroform | 0.0024 | 0.0047 | 0.241 |
| Chrysene | 0.545 | < 0.0100 | 211 |
| Chloromethane | 0.034 | < 0.0100 | 18.2 |
| Cyanide | 0.195 | 0.125 | 9.25 |
| 4,4-DDT | 0.0032 | < 0.0100 | 0.0103 |
| Di-n-butyl phthalate | < 0.010 | 0.005 | 73.9 |
| Dieldrin | 0.0013 | < 0.0100 | 2.78 |
| Ethylbenzene | 0.0086 | 0.00855 | 32.6 |
| Fluorene | 2.24 | 0.031 | 14.7 |
| Formaldehyde | 4.6 | 0.23 | 347 |
| Fluoranthrene | 1.22 | < 0.0100 | 7.39 |
| Isobutanol | 1.9 | 1.88 | 521 |
| Lead | 7.1 | 0.016 | 1.95 |
| Mercury | < 0.017 | < 0.0002 | 0.2 |
| Methyl Isobutyl ketone | 0.0035 | 0.0048 | 139 |
| 2-Methylnaphathalene | 0.501 | 0.012 | 2.18 |
| Methylene Chloride | 0.072 | 0.131 | 0.237 |
| Naphthalene | < 0.022 | < 0.0100 | 0.0983 |
| Nickel | 44,000 | 52 | 54.1 |
| Phenanthrene | 6.48 | 0.039 | 14.7 |
| Pyrene | 2.67 | < 0.0100 | 13.4 |
| Selenium | 15 | 0.074 | 1.0 |
| Silver | 0.027 | < 0.0020 | 5.0 |
| Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8- | 0.31E–06 | < 5.92E–08 | 7.46 E–06 mg/kg total |
| Thallium | 3.7 | 0.017 | 0.110 |
| Tin | 3.9 | < 0.0100 | 22.5 |
| Toluene | 0.015 | 0.0066 | 45.4 |
| Vanadium | 7.1 | 0.11 | 10.4 |
| Xylenes | 0.049 | 0.0486 | 28.7 |
| Zinc | 550 | 8.5 | 600 |

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< # Denotes that the constituent was below the detection limit.

TABLE 5—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI FLY ASH [1]

| Constituent | Maximum total (mg/kg) | Maximum TCLP (mg/l) | Maximum allowable TCLP delisting level (mg/L) |
|---|---|---|---|
| Antimony | 25 | 0.18 | 0.433 |
| Acetone | 0.177 | 0.959 | 2070 |
| Arsenic | 18 | 0.045 | 0.418 |
| Acetaldehyde | 255 | < 0.001 | 0.6264 |
| Barium | 110 | 1.4 | 100 |
| Bis(2-ethylhexyl)phthalate | 0.157 | 0.006 | 0.0522 |
| Cadmium | 2.9 | 0.011 | 0.362 |
| Chromium | 5.9 | 0.015 | 5.0 |
| Cobalt | 86 | 0.1 | 0.852 |
| Copper | 100 | 0.52 | 97.1 |
| Chloroform | 0.002 | 0.0044 | 0.319 |
| Chloromethane | 0.0285 | 0.0018 | 24.1 |
| Cyanide | 0.17 | < 0.001 | 0.0154 |
| Delta BHC | 0.0031 | < 0.001 | 3 |
| 1,2-Dichlorobenzene | < 0.5 | 0.0027 | 37 |
| 1,3-Dichlorobenzene | < 0.5 | 0.0023 | 37 |

TABLE 5—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI FLY ASH [1]—Continued

| Constituent | Maximum total (mg/kg) | Maximum TCLP (mg/l) | Maximum allowable TCLP delisting level (mg/L) |
|---|---|---|---|
| Formaldehyde | 5.44 | 0.272 | 461 |
| Lead | 12 | 0.021 | 2.45 |
| Methanol | 12.2 | < 0.001 | 0.6743 |
| Methyl isobutanol ketone | 0.004 | 0.0048 | 184 |
| Methylene Chloride | 0.047 | 0.137 | 0.315 |
| Nickel | 110,000 | 47 | 53.8 |
| Nitrobenzene | < 0.5 | 0.011 | 1.15 |
| Selenium | 25 | 0.082 | 1.0 |
| Silver | 2.4 | < 0.001 | 5.0 |
| Thallium | 6.7 | 0.019 | 0.146 |
| Tin | 7.8 | < 0.001 | 22.5 |
| Toluene | 0.002 | 0.037 | 60.1 |
| Vanadium | 6.2 | < 0.001 | 14.36 |
| Zinc | 4200 | < 0.001 | 11.3 |
| Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8- | | 2.8 E–06mg/kg | 8.39 E–05 mg/kg total |

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< # Denotes that the constituent was below the detection limit.

TABLE 6—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE RKI SCRUBBER WATER BLOWDOWN [1]

| Constituent | Maximum TCLP (mg/l) | Maximum allowable TCLP delisting level (mg/l) |
|---|---|---|
| Antimony | 0.041 | 0.0568 |
| Arsenic | 0.013 | 0.112 |
| Barium | 0.61 | 11.6 |
| Bis (2-ethylhexyl)phthalate | 0.009 | 0.0522 |
| Chromium | 0.019 | 10.3 |
| Cobalt | 0.012 | 0.318 |
| Copper | 0.052 | 22.1 |
| Chloroform | 0.001 | 0.0163 |
| Chloromethane | 0.0021 | 1.48 |
| Cyanide | 0.0048 | 0.752 |
| Di-n-butylphthalate | 0.001 | 25.6 |
| Lead | 0.019 | 2.57 |
| Methanol | 0.42 | 70.6 |
| Nickel | 0.50 | 5.74 |
| Silver | 0.002 | 1.71 |
| Thallium | 0.011 | 0.0179 |
| Tin | 0.022 | 22.5 |
| Vanadium | 0.006 | 4.88 |
| Zinc | 16 | 77.7 |

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
< # Denotes that the constituent was below the detection limit.

## IV. Public Comments Received on the Proposed Exclusion

### *A. Who submitted comments on the proposed rule?*

The EPA received public comments on the September 24, 2010, proposed rule from two interested parties, the Environmental Technology Council (ETC), and Heritage Environmental. Heritage Environmental submitted comments objecting to the absence of the full administrative record not appearing electronically on the regulations.gov site on October 28, 2010. ETC submitted three rounds of comments dated October 28, 2010, February 7, 2011, and March 7, 2011. The comments and responses are addressed below. Some of the ETC October 28, 2010 comments requested documents that were not contained in the electronic docket. The actual records were sent to the commenter for verification purposes and no further comment is warranted.

### *B. What comments were submitted on the Eastman Delisting Petition?*

*Comment 1.* The administrative record does not contain the company's waste sampling plan, waste analysis plan or analytical test results. The commenter cannot determine such basic information as the number and representative nature of the waste

samples. The **Federal Register** notice ambiguously states that Eastman submitted analytical results ''for eight samples for the RKI fly ash and RKI bottom ash, and RKI scrubber water blowdown.'' 75 FR at 58319.

*Response 1.* The electronic docket for this rule only contained the proposed rule and associated materials. The administrative record for this rule contains the petition including the sampling and analysis plan and results. Requests for items not found online in the electronic docket can be requested from the Regional office as described in the notice. These documents were provided to the commenter in an electronic format on January 7, 2011, after a request for information was made.

*Comment 2.* A commenter cannot determine from this general description whether the petition is supported by a total of only eight sample results, or whether EPA Region 6 meant eight samples for each type of waste material, or how many samples of each type of waste were collected. In other words, commenters cannot even determine whether the minimum number of four samples of each type of waste was collected as provided in EPA's Delisting Guidance. There is no information on how the samples were collected, what wastes were incinerated prior to sampling, whether the samples were representative of wastes processed in the unit, and why EPA Region 6 believes the analytical results submitted with the petition adequately support the delisting. In addition, commenters cannot ascertain basic information on the analytical testing that was conducted, such as detection limits and the quality assurance/quality control procedures followed by the testing laboratory. We cannot even determine whether the analysis was conducted by Eastman or a certified third-party laboratory. The commenter cannot effectively comment on the delisting without this necessary information and an adequate explanation by EPA of the basis for this administrative action.

*Response 2.* The administrative record for this petition does include the information the commenter wanted to verify. Those documents were not included in the electronic docket because electronic copies were not available at the time of proposal. Requests for items not found online in the electronic docket could have been requested from the Regional office as described in the notice.

*Comment 3.* Surprisingly, the record also does not contain the DRAS modeling results or any report on the model inputs, analysis, or conclusions, other than the summaries for constituents in the **Federal Register** tables. Most of the description of the DRAS analysis in the **Federal Register** notice is boilerplate that EPA includes in every delisting notice, and very little information or analysis is presented regarding the subject wastes.

*Response 3.* The DRAS results are not available electronically for this docket. The administrative record for the rule contains hard copies of each DRAS run and the results. Requests for items not found online in the electronic docket can be requested from the Regional office as described in the notice.

*Comment 4.* From the limited information gleaned from the **Federal Register** notices, the commenter must also raise a number of substantive concerns about the delisting petition. It appears that only total and TCLP analyses were conducted on the subject wastes. As EPA is aware, the TCLP was intended to simulate the highly acidic conditions in an active municipal landfill with decomposing organic wastes, and yet it appears that the subject wastes would be disposed in an on-site industrial landfill. No information is provided on the pH conditions of the industrial landfill. The leachability of hazardous constituents can be highly dependent on pH. If the pH in the landfill receiving the waste is not acidic, the leaching of the delisted waste may not perform as predicted by the TCLP. For this reason, EPA's Delisting Guidance provides for testing of the waste under a range of pH conditions. It does not appear that this guidance was followed, and EPA has provided no explanation for public comment on why the subject waste was not tested under multiple pH conditions. In most of the delisting actions by other EPA regions of which the commenter is aware, multiple pH testing was required and we cannot determine, and therefore cannot comment on, whether and why such testing was not required for this delisting petition.

*Response 4.* Multiple pH testing was conducted on the materials, since the multiple pH test is not a recognized test method or test protocol, while mentioned in guidance and performed by most petitioners, EPA Region 6 has never published the data gathered from these results. In all delistings, only TCLP and totals data are reported. Requests for items not found online in the electronic docket can be requested from the Regional office as described in the notice.

*Comment 5.* In addition, Eastman apparently petitioned to exclude waste streams that bear a limited subset of RCRA Hazardous Waste Codes (5 F-codes, 2 K-codes, and 12 U-codes). The correct identification of these waste codes is critical because EPA then used the basis for listing these waste codes to select a relatively short list of hazardous constituents for analysis and delisting levels. 75 FR at 58318. In our experience, it seems highly improbable that these are the only codes associated with incinerator operations at a large, complex chemical facility. Indeed, the **Federal Register** notice does disclose that the incinerator is RCRA-permitted for ''a variety of D-, F-, U-, K-, and P-codes.'' 75 FR at 58317. Apparently many of these coded wastes were not considered for purposes of the petition. Given the nature of incinerator operations, there is no explanation for how ash and scrubber water covered by the petition would not also contain these additional waste codes. Indeed, there is literally no information in the administrative record for public comment on why the limited set of waste codes was selected for the petition, and how EPA will assure that only incinerator ash and scrubber water bearing only the 19 selected codes will be managed as delisted wastes.

*Response 5.* The Eastman Permit limits the types of wastes that are treated in its rotary kiln incinerator to those addressed in the delisting petition. The operating permit for the rotary kiln incinerator restricts and limits the acceptance of wastes which carry only these 19 codes. Those 19 waste codes were considered the focus of the delisting. Wastes with codes not listed in the Delisting Petition are still subject to hazardous waste regulation and are not covered by the delisting exclusion.

*Comment 6.* Moreover, the **Federal Register** notice states that ''there are some production plants that are not owned by Eastman but are located on the facility,'' and these unidentified plants also send hazardous wastes to the incinerator. 75 FR at 58317. There is no information in the record that identifies these facilities, including the nature of their production activities, raw materials used, and wastes generated. Hazardous wastes are also accepted for processing in the incinerator ''from other off-site Eastman facilities.'' *Id.* Again, no information is provided in the administrative record that identifies these facilities or describes their processes, raw materials, or generated wastes, other than the broad assertion in the **Federal Register** that the wastes are ''similar'' to those generated by Eastman. *Id.* Since the full and accurate description of the hazardous wastes processed in the incinerator is critical to

the proper selection of hazardous constituents for testing and delisting analysis, this bare-bones description and lack of supporting data and information in the administrative record cannot sustain a delisting action.

*Response 6.* The Eastman RCRA Permit allows the facility to accept wastes from other Eastman facilities and treat in the rotary kiln incinerator. The Permit limits the types of wastes that are treated in its rotary kiln incinerator to those addressed in the delisting petition. The operating permit for the rotary kiln incinerator restricts and limits the acceptance of wastes which carry only these 19 codes. Those 19 waste codes were considered the focus of the delisting. Wastes with codes not listed in the Delisting Petition are still subject to hazardous waste regulation and are not covered by the delisting exclusion.

*Comment 7.* The DRAS model was apparently run for only 49 hazardous constituents, a surprisingly small number. Under RCRA section 3001(f), EPA must consider not only the constituents for which the subject wastes were listed, but also additional constituents that may cause the waste to be hazardous. Under EPA's Delisting Guidance, the Agency usually requires that a delisting petitioner submit analytical results and undertake DRAS modeling for literally hundreds more hazardous constituents. Again, it somewhat defies credulity that incinerator ash and scrubber water from a major, complex chemical plant would contain such a small list of only 49 hazardous constituents. Lacking any analytical data or other information in the administrative record, however, ETC cannot effectively comment on this critical issue. In fact, ETC cannot comment on the DRAS modeling in any substantive respect because the record contains inadequate information.

*Response 7.* The EPA provided the administrative record and its supporting documents to the commenter. No additional comments were received regarding the DRAS analysis of the waste streams. Generally, in all delistings, the DRAS model is run for chemicals which are the basis for the waste codes petitioned for in the delisting and any additional waste codes detected in the waste. For Eastman specifically, there were 19 waste codes evaluated. These waste codes represented more than 200 chemical constituents. In its analysis of the data, EPA only found that 49 of the chemical constituents were detected in the analysis of the three Eastman waste streams. These 49 waste codes were evaluated in the DRAS model.

*Comment 8.* We also must question why this delisting is being considered for incinerator ash and scrubber water that would effectively override the RCRA land disposal treatment standards for the subject wastes. Eastman has not petitioned to delist hazardous wastes which do not meet the listing criteria as generated. There is apparently no dispute that the waste materials processed in the incinerator are hazardous wastes.

With respect to those wastes, EPA has already made the determination based on lengthy and thorough LDR rulemakings that combustion or comparable treatment to the specified treatment levels is required to minimize short-term and long-term threats to human health and the environment. In addition, EPA has already determined that disposal of the treated wastes in a RCRA-permitted landfill that meets minimum technology requirements (double synthetic liner, groundwater monitoring, *etc.*) is necessary for adequate public health and environmental protection. EPA Region 6 has provided no justification in the record for overriding these national determinations, other than the conclusory and unsupported assertion in the **Federal Register** notice that the delisting levels will be adequate for such protections. Since the petitioner already processes the hazardous wastes in a RCRA-permitted incinerator and disposes of the residuals in an on-site RCRA-permitted landfill, we can see no justification for the potential lessening of public health and environmental protection from the proposed delisting action. The ETC is also concerned that EPA Region 6's approval of this delisting would contravene Congress's land disposal restrictions and treatment requirements in the RCRA statute.

Likewise, after careful review of the administrative record for the Eastman Chemical delisting petition, it is clear that the incinerator ash and scrubber water blowdown derived from the incineration of numerous F-, K- and U-listed hazardous wastes are not eligible for delisting, and that such an action would also violate the RCRA treatment requirements and land disposal prohibitions.

We begin with basic principles—all seemingly ignored in the proposed delistings. A waste is eligible for delisting only if that waste as generated at a particular facility does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the waste may not contain any other Appendix VIII constituents that would cause the waste to be hazardous. RCRA § 3001(f) and 40 CFR 260.22.

Likewise, the incinerator residues from the Eastman facility are derived from the incineration of numerous waste streams that are F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213 and U359 hazardous wastes. By operation of the derived-from rule, the Eastman incinerator residues are these same F-, K- and U-listed hazardous wastes. The legal issue raised by the Eastman Chemical delisting is whether the original F-, K- and U-listed hazardous wastes would meet the applicable treatment requirements prior to land disposal if the proposed delisting of the incineration residuals were granted.

However, EPA Region 6 has proposed to delist the incinerator residues and allow land disposal at constituent levels that are significantly higher than the required treatment standards. There is no exception from the land disposal prohibitions for inadequately treated residues; in fact, allowing such an exception would obviously eviscerate the treatment requirements. The original F-, K- and U-listed hazardous wastes cannot be land disposed if the incinerator ash does not meet the applicable treatment standards, and a delisting petition cannot be used to evade this statutory requirement. For this reason, the concentration levels in the incineration residues would have to be lower than applicable treatment standards for a delisting to be possible.

The following are examples of F039 treatment levels compared to Eastman delisting levels (all concentrations in mg/l TCLP): Barium 21.0 vs. 100 delisted fly ash; Cadmium 0.11 vs. 0.362 delisted fly ash; Chromium 0.60 vs. 5.0 delisted bottom ash and fly ash; Lead 0.75 vs. 2.45 delisted fly ash; Nickel 11.0 vs. 54.1 delisted bottom ash; Silver 0.14 vs. 5.0 delisted fly ash and bottom ash.

*Response 8.* The Delisting Program and the LDR program serve different purposes and because they serve different purposes, different standards of compliance apply. As the commenter states ''A waste is eligible for delisting only if that waste as generated at a particular facility does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the waste may not contain any other Appendix VIII constituents that would cause the waste to be hazardous. RCRA § 3001(f) and 40 CFR 260.22.''

The derived-from rule states that any solid waste generated from the treatment, storage, or disposal of a listed hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, remains a hazardous waste

*unless and until delisted.* (§ 261.3(c)(2)(i)).

EPA's regulations establish two ways of identifying solid wastes as hazardous under RCRA. A waste may be considered hazardous if it exhibits certain hazardous properties (''characteristics'') or if it is included on a specific list of wastes EPA has determined are hazardous (''listing'' a waste as hazardous) because we found them to pose substantial present or potential hazards to human health or the environment. EPA's regulations in the Code of Federal Regulations (40 CFR) define four hazardous waste characteristic properties: ignitability, corrosivity, reactivity, or toxicity (see 40 CFR 261.21–261.24).

In order to list wastes EPA conducts a more specific assessment of a particular waste or category of wastes. The Agency will ''list'' them if they meet criteria set out in 40 CFR 261.11. As described in § 261.11, EPA may list a waste as hazardous if the waste: Exhibits any of the characteristics, *i.e.,* ignitability, corrosivity, reactivity, or toxicity (§ 261.11(a)(1)); is ''acutely'' hazardous (*e.g.,* if it is fatal to humans or animals at low doses, § 261.11(a)(2)); or it contains any of the toxic constituents listed in 40 CFR part 261, Appendix VIII and, after consideration of various factors described in the regulation, is capable of posing a ''substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed'' (§ 261.11(a)(3)).

EPA placed a substance on the list of hazardous constituents in Appendix VIII if scientific studies have shown the substance has toxic effects on humans or other life forms.

Generally, listing of wastes are not driven by threshold limits except in the case of the toxicity characteristic (TC) determination. Several of the limits cited by the commenter are the TC limit for the constituents stated. If the waste is characteristic, then it can't be delisted. The delisting limit is bound by the TC limit.

In 1984, Congress created EPA's Land Disposal Restrictions (LDR) program. The LDR program ensures that toxic constituents present in hazardous waste are properly treated before hazardous waste is land disposed. Since then, the LDR team has developed mandatory technology-based treatment standards that must be met before hazardous waste is placed in a landfill. These standards help minimize short and long-term threats to human health and the environment, which directly benefits local communities where hazardous waste landfills are located. The LDR Program does not determine if a waste is hazardous. It regulates how hazardous wastes are to be managed at the time of disposal.

We do believe that the concentrations specified as delisting levels do minimize short term and long term threats to human health and the environment. Whereas, some LDR treatment standards are based on the best demonstrated technology, the delisting exit levels are risk based standards. We have not stated that Eastman is not subject to the LDR standards because the waste was not delisted at the point of generation, Eastman may submit a variance to the treatment standards as described in § 268.42(b) or 268.44 in order to ensure compliance with the LDR standards, but the Delisting decision may still be made. However, wastes destined for disposal in Subtitle C landfills are subject to the LDR limits. Therefore, wastes when delisted must comply with all applicable Subtitle D landfill requirements.

*Comment 9.* The ETC also notes that the DRAS software used by EPA for these delistings was apparently a new Version 3, and that the changes from Version 2 may not previously have been subject to public notice and opportunity for comment. We are in the process of determining all the changes incorporated into Version 3 and the effect of those changes on delisting levels and the protection of human health and the environment. The ETC requests that EPA Region 6 clarify the changes made in Version 3, the effect of those changes on the pending delistings, and the agency's rationales for those changes to allow for effective public comment.

*Response 9.* As discussed in the Eastman Direct Final Rule and Proposal, the changes made between version 2 of DRAS and Version 3 of DRAS are described in 73 FR 28777. In July 2007, U.S. EPA prepared an update of the DRAS by releasing version 3.0. The update addressed a number of issues with version 2 and improved the fate and transport modeling. To estimate the downgradient concentrations of waste leachate constituents released into groundwater, the DRAS utilizes conservative dilution attenuation factors (DAFs) taken from Monte-Carlo applications of U.S. EPA's Composite Model for Leachate Migration with Transformation Products (CMTP). DRAS 3.0 includes all new DAFs from new CMTP modeling runs. The new modeling takes advantage of: Updated saturated flow and transport modules; a new surface impoundment module and database; model corrections for unrealistic scenarios (like water tables modeled above the ground surface); new isotherms for metals; and a revised recharge and infiltration database. As a result, many of the DAFs used in previous versions of DRAS have changed. Further affecting the groundwater calculation, the relationships for determining scaling factors used to scale the DAFs to account for very small waste streams have been updated to reflect the new database information on landfills and surface impoundments and were also corrected for a metric conversion of cubic meters to cubic yards. The new scaling factors are generally higher than those of previous versions of DRAS, resulting in higher estimated dilution and attenuation at lower waste volumes for both landfills and surface impoundments. The new metals DAFs, based on MINTEQA2 isotherms, can vary as a function of the landfill leachate concentration. This means that the effective DAF (including a scaling factor adjustment, if necessary) for an input concentration may differ significantly with the effective DAF that corresponds to the allowable leachate concentration. DRAS 3.0 now displays the DAFs in both the forward calculated risk tables and the tables of maximum allowable concentrations so that the difference is evident to the user. The isotherms that vary by leachate concentration are represented in DRAS by a look-up table with leachate concentrations paired with DAFs. In the event that an actual concentration input to DRAS lies between two values in the table, or an allowable receptor concentration lies between two calculated receptor concentrations from the table, DRAS 3.0 will linearly and proportionally extrapolate between the two values to determine the corresponding exposure or allowable leachate concentration. EPA changed the calculation for particle emissions caused by vehicles driving over the waste at the landfill to provide a more realistic estimate. The estimate depends upon the number of trips per day landfill vehicles make back and forth over the waste. In previous versions of DRAS, this value was conservatively set at a 100 trips per day, corresponding with an extremely high annual waste volume. In DRAS 3.0, a minimum number of trips per day was conservatively assumed from the Subtitle D landfill survey (7.4 trips per day at the 95th percentile of values reported). The number of trips per day specific to the actual waste volume is then added to the minimum to reflect

the impact of very large waste streams. This will considerably reduce the particle emission estimate for wastes generated at all but the largest annual volumes. EPA added a conversion from English to metric tons to the calculation of particle emissions from waste unloading, resulting in a decrease of roughly 10% over previous versions of DRAS. We also made a unit-conversion factor correction to part of the air volatile pathway which will reduce the impact to the receptor. An error in the back-calculation for fish ingestion pathway was corrected to reflect the difference between freely dissolved and total water column waste constituent concentrations. For the estimation of risk and hazard, we made a number of updates to the forward and back calculations. Previous versions of DRAS assumed that only 12.5% of particles are absorbed by the receptor's respiratory system. This is no longer necessary as toxicity reference values for inhalation currently recommended by U.S. EPA relate risk or hazard directly to exposure concentration. DRAS 3.0 does not include the 12.5% reduction. This change significantly increases estimated risks due to particle inhalation and lowers corresponding allowable concentrations. DRAS Version 3.0.47 has a reformulated back calculation of the allowable leachate concentrations from exposure due to contaminants volatilized during household water use to match the forward calculation of risk. In previous versions of DRAS, the forward calculation summed the risks from exposure to all three evaluated household compartments (the shower, the bathroom, and the whole house) while the back calculation based the maximum allowable level on the single most conservative compartment. The DRAS 3.0 maximum allowable leachate concentrations are now based on the combined impact of all three compartments. The house exposure was also expanded to a 900 minute (15 hour) daily exposure to reflect non-working residents who have an overall 16 hour in-house exposure (the other 1 hour is spent in the shower and bathroom). EPA resolved the inconsistencies with the way DRAS chooses limiting pathways for specific waste constituents in DRAS 3.0. EPA checked all toxicity reference values in DRAS and updated where necessary. Approximately 180 changes were made to the toxicity reference values in DRAS based on data in IRIS, PPRTV, HEAST, NCEA, CalEPA and other sources. Some route-to-route extrapolations of oral toxicity data to inhalation exposure have been returned to DRAS 3.0 if consistent with Agency policy. See U.S. EPA 2006 for full accounting of this methodology. The same reference also includes discussions of toxicity reference choices where the multiple values were available or where the toxicity reference values were specific to particular species of constituents.

*Comment 10.* On January 18, 2011, President Barack Obama signed Executive Order 13563 to ''improve regulation and regulatory review'' in his Administration. In the section on public participation in the regulatory process, President Obama stated that ''each agency shall afford the public a meaningful opportunity to comment *through the internet* on any proposed regulation, *with a comment period that should generally be at least 60 days.''*

*Response 10.* The Eastman Direct Final Rule published in the **Federal Register** on September 24, 2010, several months before President Obama's Executive Order was issued. The EPA Region 6 will abide by the order issued on January 18, 2011 in future delisting actions.

*Comment 11.* Obviously, our concern is that these supporting materials may have been generated subsequent to the proposed delisting, and therefore could not have been relied on by EPA in developing the proposed rule. We request that EPA Region 6 clarify whether the DRAS output files included in the administrative record were the output files relied on for the proposed rule, how this could be possible given the dates of the output files, and whether other output files existed prior to proposal of the delisting that were not included in the administrative record.

*Response 11.* The DRAS outputs for the Eastman petition were generated December 10, 2009 and January 6, 2010 both prior to the issuance of the direct final rules.

*Comment 12.* An initial review of the Eastman Chemical delisting petition raises numerous questions. The petition reveals that several dioxin/furan congeners were present in the samples of incinerator ash, with analytical results for selected hexa-, hepta-, and octa- dioxins and -furans in the fly and bottom ashes listed in Tables 1–5 of the Petition. However, only one delisting value was provided in the tables for octachlorodibenzofuran (OCDF) in the bottom ash and fly ash at a level of 10,000,000 mg/kg. This value is equal to 1000 percent OCDF, which of course is impossible. This approach to dioxins/furans is totally inadequate for a hazardous waste incinerator, where products of incomplete combustion are a concern that must be addressed. Similarly, the delisting petition ignores PCBs, even though PCBs can form as PICs in the combustion process.

In addition, the delisting levels for numerous metals, volatiles, semi-volatiles and pesticides listed in the tables are very high, some on the order of 1,000,000,000 mg/kg (*e.g.,* tin and xylenes for the bottom ash and methanol for the fly ash). Again, these levels are impossible, and indicate serious errors that undermine the technical veracity of the delisting petition.

*Response 12.* The DRAS is a mathematical model which calculates the delisting level based on health based numbers and a delisting attenuation factor. The delisting attenuation factor is not bound, so it can sometimes produce impractical values for the delisting level, because of a chemicals affinity not to leach or degrade. Those values are not proposed as exit values because the technical review of the petition highlighted the infeasibility of these situations.

*Comment 13.* Some metals are present in the incinerator ash at very close to the delisting levels. For example, antimony was present in the fly ash at a level of 0.18 mg/l TCLP versus the delisting level of 1.08 mg/l TCLP; arsenic at a level of 0.045 versus 0.049; and nickel at 47 versus 148. For this reason, sampling and analysis to demonstrate compliance with the delisting levels should be fairly stringent, yet we do not see any information in the administrative record on EPA's sampling requirements.

*Response 13.* The sampling plan is part of the administrative record and the requirements for sampling frequency are explained in the verification requirements of the exclusion language. A waste is eligible for delisting only if that waste as generated at a particular facility does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the waste may not contain any other Appendix VIII constituents that would cause the waste to be hazardous. RCRA § 3001(f) and 40 CFR 260.22. Concentrations below a delisting level are eligible for the exclusion. We do monitor and require sampling to ensure that the concentrations of the waste to be delisted are measured and below the delisting level.

*Comment 14.* As a further concern, most of the analysis for the Eastman delisting petition was apparently performed by a laboratory owned and operated by Eastman. There is no explanation for why in this case EPA Region 6 did not require use of an independent certified analytical

laboratory, as must be done in most other delisting cases.

*Response 14.* The petitioner must use a certified analytical laboratory to supply data for the delisting petition. The laboratory used by Eastman is a certified laboratory and the data validation package was reviewed and accepted.

*Comment 15.* The Eastman incinerator should be considered a commercial incineration facility because Huntsman Chemical and Air Liquide ship significant quantities of hazardous waste to the Eastman incinerator. Yet very little data is presented to describe the Huntsman and Air Liquide waste and no information is provided on waste codes. Because of the wider range and variability of waste streams processed, the sampling and analytical concerns described above are magnified and require a reasonable response from EPA.

*Response 15.* The wastes generated from Huntsman Chemical and Air Liquide are covered by the Texas Eastman Operating Permit and are acceptable waste streams for incineration in the rotary kiln incinerator. Both facilities are on-site at Eastman Chemical and are processes which were previously part of the Eastman Chemical Process Train but for business reasons were sold to the aforementioned companies. There is no additional variability of the waste stream created because the wastes are generated by processes owned by Huntsman and Air Liquide are present in the waste stream.

## V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

### Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 9, 2011.

**Carl E. Edlund,**

*Director, Multimedia Planning and Permitting Division.*

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

## PART 261—[AMENDED]

■ 2. In Tables 1, 2 and 3 of Appendix IX to Part 261 add the following waste stream in alphabetical order by facility to read as follows:

### Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * | * * * * * |
| Eastman Chemical Company-Texas Operations. | Longview, TX ..... | RKI bottom ash (EPA Hazardous Waste Numbers F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359.) generated at a maximum rate of 1,000 cubic yards per calendar year after November 23, 2011 and disposed in Subtitle D Landfill.<br>RKI fly ash EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 750 cubic yards per calendar year after November 23, 2011 and disposed in Subtitle D Landfill.<br>RKI scrubber water blowdown (EPA Hazardous Waste Numbers D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359 generated at a maximum rate of 643,000 cubic yards (500,000 million gallons) per calendar year after November 23, 2011 and treated and discharged from a Wastewater Treatment Plant.<br>For the exclusion to be valid, Eastman must implement a verification testing program for each of the waste streams that meets the following Paragraphs:<br>(1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph.<br>(A) *RKI Bottom Ash.* Leachable Concentrations (mg/l): Antimony—0.801; Acetone—33.8; Arsenic—0.126; Acetaldehyde—5.35; Acenaphthylene—31.9; Anthracene—77.9; Acenaphthene—31.9; Barium—100; Benzene—0.231; Bis(2-ethylhexyl)phthalate—103; Benzo(a) anthracene—0.211; Benzo(a) pyrene—79.1; Benzo(b) flouranthene—673; Bromomethane—0.0526; n-Butyl Alcohol—174; Cadmium—0.274; Chromium—5.0; Cobalt—0.643; Copper—73.8; Chloroform—0.241; Chrysene—211; chloromethane—18.2; Cyanide—9.25; 4,4- DDT—0.0103; Di-n-butyl phthalate- 73.9; Dieldrin—2.78; Ethylbenzene—32.6; Fluorene—14.7; Formaldehyde—347; Fluoranthrene—7.39; Isobutanol—521; Lead—1.95; Mercury—0.2; Methy Isobutyl ketone—139; 2-Methylnaphathalene—2.18; Methylene Chloride—0.237; Naphthalene—0.0983; Nickel—54.1; Phenanthrene—14.7; Pyrene—13.4; Selenium—1.0; Silver—5.0; Thallium—0.110; Tin—22.5; Toluene—45.4; Vanadium—10.4; Xylene—28.7; Zinc—600.<br>*Total Concentrations (mg/kg)* Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8–7.46 E–06 mg/kg.<br>(B) *RKI Fly Ash.* Leachable Concentrations (mg/l): Antimony—0.111; Acetone—533; Arsenic—0.178; Barium—36.9; Bis(2-ethylhexyl)phthalate—6.15; Chromium—2.32; Copper—26.5; Ehtylbenzene—11.1; Methylene Chloride—0.0809; Naphthalene—0.0355; Nickel—13.8; Phenanthrene—2.72; Toluene—15.5; Trichloroethane—11900; Trichloroethylene—0.0794; Vanadium—1.00; Zinc—202.<br>*Total Concentrations (mg/kg)* Tetrachlorodibenzo-p-dioxin (TCDD) 2,3,7,8-4.30 E–05 mg/kg.<br>(C) *RKI Scrubber Water Blowdown.* TCLP Concentrations (mg/l): Antimony—0.0568; Arsenic—0.112; Barium—11.6; Bis(2-ethylhexyl)phthalate—0.0522; Chromium—5.0; Cobalt—0.318, Copper—22.1; Chloroform—0.0163, Chloromethane—1.48; Cyanide—0.752; Di-n-butylphthalate—25.6; Lead—2.57; Methanol—70.6; Nickel—5.74; Silver—1.71; Thallium—0.0179; Tin—22.5; Vanadium—4.88; Zinc—77.7.<br>(2) Waste Holding and Handling:<br>(A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown has occurred for four consecutive quarterly sampling events.<br>(B) If constituent levels in any annual sample and retest sample taken by Eastman exceed any of the delisting levels set in paragraph (1) for the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown, Eastman must do the following:<br>(i) Notify EPA in accordance with paragraph (6) and<br>(ii) Manage and dispose the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown as hazardous waste generated under Subtitle C of RCRA.<br>(3) Testing Requirements:<br>Upon this exclusion becoming final, Eastman must perform analytical testing by sampling and analyzing the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown as follows:<br>(A) Initial Verification Testing:<br>(i) Collect four representative composite samples of each of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown at quarterly intervals after EPA grants the final exclusion. The first round of composite samples of each waste stream may be taken at any time after EPA grants the final approval. Sampling must be performed in accordance with the sampling plan approved by EPA in support of the exclusion.<br>(ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) indicates that the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown must continue to be disposed as hazardous waste in accordance with the applicable hazardous waste requirements until such time that four consecutive quarterly samples indicate compliance with delisting levels listed in paragraph (1). |

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (iii) Within sixty (60) days after taking its last quarterly sample, Eastman will report its analytical test data to EPA. If levels of constituents measured in the samples of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown do not exceed the levels set forth in paragraph (1) of this exclusion for four consecutive quarters, Eastman can manage and dispose the non-hazardous RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown according to all applicable solid waste regulations.<br>(B) Annual Testing:<br>(i) If Eastman completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), Eastman must begin annual testing as follows: Eastman must test a representative composite sample of the RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown for all constituents listed in paragraph (1) at least once per calendar year. If any measured constituent concentration exceeds the delisting levels set forth in paragraph (1), Eastman must collect an additional representative composite sample within 10 days of being made aware of the exceedence and test it expeditiously for the constituent(s) which exceeded delisting levels in the original annual sample.<br>(ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the Eastman RKI bottom ash, RKI fly ash, and RKI scrubber water blowdown are representative for all constituents listed in paragraph (1).<br>(iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken.<br>(iv) The annual testing report shall include the total amount of delisted waste in cubic yards disposed during the calendar year.<br>(4) Changes in Operating Conditions: If Eastman significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA.<br>Eastman must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream.<br>(5) Data Submittals:<br>Eastman must submit the information described below. If Eastman fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph(6). Eastman must:<br>(A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or comparable electronic media.<br>(B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.<br>(C) Furnish these records and data when either EPA or the State of Texas requests them for inspection.<br>(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted:<br>"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.<br>As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.<br>If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."<br>(6) Reopener. |

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (A) If, anytime after disposal of the delisted waste Eastman possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.<br>(B) If either the annual testing (and retest, if applicable) of the waste does not meet the delisting requirements in paragraph 1, Eastman must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.<br>(C) If Eastman fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.<br>(D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from receipt of the Division Director's notice to present such information.<br>(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.<br>(7) *Notification Requirements:* Eastman must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.<br>(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.<br>(B) For onsite disposal a notice should be submitted to the State to notify the State that disposal of the delisted materials have begun.<br>(C) Update one-time written notification, if it ships the delisted waste into a different disposal facility.<br>(D) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision. |
| * | * | * * * * * |

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * | * * * * * |
| Eastman Chemical Company—Texas Operations. | Longview, TX ..... | *RKI Bottom Ash.* (EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 1,000 cubic yards per calendar year after November 23, 2011 and disposed in Subtitle D Landfill.<br>*RKI Fly Ash.* (EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 2,000 cubic yards per calendar year after November 23, 2011 and disposed in Subtitle D Landfill.<br>*RKI Scrubber Water Blowdown.* (EPA Hazardous Numbers D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 643,000 cubic yards (500,000 million gallons) per calendar year after November 23, 2011 and treated and discharged from a Wastewater Treatment Plant.<br>Eastman must implement the testing program in Table 1. Wastes Excluded from Non-Specific Sources for the petition to be valid. |
| * | * | * * * * * |

TABLE 3—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

| Facility | Address | Waste description |
|---|---|---|
| * | * | * * * * * |
| Eastman Chemical Company-Texas Operations. | Longview, TX ..... | *RKI Bottom Ash.* (EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 1,000 cubic yards per calendar year after November 23, 2011 and disposed in Subtitle D Landfill.<br>*RKI Fly Ash.* (EPA Hazardous Waste Number F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 2,000 cubic yards per calendar year after November 23, 2011 and disposed in Subtitle D Landfill.<br>*RKI Scrubber Water Blowdown.* (EPA Hazardous Numbers D001, D002, D003, D007, D008, D018, D022, F001, F002, F003, F005, F039, K009, K010, U001, U002, U031, U069, U107, U112, U117, U140, U147, U161, U213, and U359) generated at a maximum rate of 643,000 cubic yards (500,000 million gallons) per calendar year after November 23, 2011 and treated and discharged from a Wastewater Treatment Plant.<br>Eastman must implement the testing program in Table 1. Wastes Excluded from Non-Specific Wastes for the petition to be valid. |
| * | * | * * * * * |

[FR Doc. 2011–30147 Filed 11–22–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 5b

**RIN 0906–AA91**

### Privacy Act; Exempt Record System

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule exempts the system of records (09–15–0054, the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr) for the National Practitioner Data Bank (NPDB) from certain provisions of the Privacy Act (5 U.S.C. 552a). The exemption is necessary due to the recent expansion of the NPDB under section 1921 of the Social Security Act to include the investigative materials compiled for law enforcement purposes reported to the Healthcare Integrity and Protection Data Bank (HIPDB). The system of records for the HIPDB is exempt from certain provisions of the Privacy Act (*see* 45 CFR 5b.11(b)(2)(ii)(F)). In order to maintain the exemption for the HIPDB investigative materials, which will now also be available through the NPDB, it is necessary to extend the same exemption to the NPDB.

**DATES:** The effective date of this rule is December 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Grubbs, Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 8–103, Rockville, MD 20857; *telephone number:* (301) 443–2300.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The NPDB was established by Title IV of Public Law 99–660, the Health Care Quality Improvement Act of 1986, as amended. The NPDB is primarily an alert or flagging system intended to facilitate a comprehensive review of health care practitioners' professional credentials. On January 28, 2010, HRSA published a final rule in the **Federal Register** (75 FR 4656) designed to implement section 1921 of the Social Security Act (herein referred to as section 1921). Section 1921 expands the scope of the NPDB. Section 1921 requires each State to adopt a system of reporting to the Secretary certain adverse licensure actions taken against health care practitioners and health care entities by any authority of the State responsible for the licensing of such practitioners or entities. It also requires each State to report any negative action or finding that a State licensing authority, a peer review organization, or a private accreditation entity has finalized against a health care practitioner or entity. Practically speaking, section 1921 resulted in, among other consequences, the transfer of the vast majority of information contained in the HIPDB, a companion data bank, to the NPDB.

The HIPDB was created by the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law (Pub. L. 104–191), which required the Secretary, acting through the Office of Inspector General (OIG) and the United States Attorney General, to establish a new health care fraud and abuse control program, to combat health care fraud and abuse. Together, the HIPDB and NPDB serve to facilitate review of health care practitioners' and entities' backgrounds.

### II. Summary of the Proposed Rule

In the February 17, 2011 **Federal Register** (76 FR 9295), HRSA published a proposed rule that would exempt the NPDB system of records from subsection (c)(3), (d)(1) through (d)(4), (e)(4)(G) and (H), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions are necessary to deal with the expansion of NPDB information after implementation of section 1921 on March 1, 2010. Groups that have access to the section 1921 information in the NPDB include all organizations eligible to query the NPDB under the Health Care Quality Improvement Act of 1986 (hospitals, other health care entities that conduct peer review and provide health care services, State medical or dental boards, and other health care practitioner State boards), other State licensing authorities, agencies administering Federal health care programs (including private entities administering such programs under contract), State agencies administering or supervising the administration of State health care programs, State Medicaid Fraud Control Units, certain law enforcement agencies, utilization and quality control peer review organizations (referred to as QIOs), as defined in Part B of title XI of the Social

Security Act, and appropriate entities with contracts under section 1154(a)(4)(C) of the Social Security Act. Individual health care practitioners and entities can self-query.

One of the purposes of these data will be use of this information by a Federal or State government agency charged with the responsibility of investigating or prosecuting a case where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The information in this system may also be used in the preparation for a trial or hearing for such violation.

Specifically, this final rule now exempts the NPDB from the following subsections of the Privacy Act for the reasons set forth below:

• Subsection (c)(3). This provision requires that individuals be provided an accounting of disclosures of their records from a Privacy Act system, if requested. Providing an accounting of disclosures (*i.e.,* an accounting of queries made by law enforcement agencies) to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could lead to the destruction or alteration of evidence, tampering with witnesses, and other evasive actions that could impede or compromise an investigation.

• Subsections (d)(1) through (d)(4). These provisions require that individuals be allowed to access and correct or amend their records in a Privacy Act system, if requested. Release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, or could reveal sensitive investigative techniques and procedures. Report subjects will have access to information on all other queries to the data bank. Report subjects are guaranteed access to, and correction rights for, substantive information reported to the NPDB. The procedures, appearing in 45 CFR part 60, use the Privacy Act access and correction procedures as a basic framework while, at the same time, providing significant additional rights (such as automatic notification to the record subject of any report filed with the data bank). Data bank subjects also have broader rights on NPDB correction procedures, including the right to file a statement of disagreement as soon as a report is filed with the data bank.

• Subsections (e)(4)(G) and (H), and (f). These provisions require that the system of records notice for a Privacy Act system provide the procedures whereby individuals can be notified at their request if the system contains records about them and can request and gain access to, and contest the content of, their records. Notifying an individual who is the subject of an investigation or a witness that a system of records contains information about him or her could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise an investigation. Report subjects are guaranteed access to, and correction rights for, substantive information reported to the NPDB. The same correction procedures apply (contained in 45 CFR part 60) as mentioned in the earlier bullet for subsections (d)(1) through (d)(4).

Accordingly, HRSA proposes to amend 45 CFR 5b.11(b)(2)(ii) of the HHS Privacy Act regulations by adding the following:

• A new paragraph (L) that exempts investigative materials compiled for law enforcement purposes for the National Practitioner Data Bank from requirements (c)(3), (d)(1) through (d)(4), (e)(4)(G) and (H), and (f) of the Privacy Act (5 U.S.C. 552a).

The system of records for the NPDB, which was last published in the **Federal Register** on October 1, 2010 (75 FR 60763), will be re-published promptly to reflect this change.

## III. Summary and Response to Public Comments

The proposed rule set forth a 60-day public comment period, ending April 18, 2011. HRSA received one response from a national association representing physicians. Following are two concerns highlighted by the commenter and our responses to those concerns.

*Issue #1:* Commenter believes that shielding law enforcement queries from a NPDB physician subject's review would result in wasted law enforcement resources and would deny physicians due process.

*Response:* The restriction on revealing law enforcement queries to data bank report subjects has been in place for the last 15 years for the Healthcare Integrity and Protection Data Bank (HIPDB). Law enforcement queries constitute less than one percent of the total queries to the data bank and on average there are only 20 law enforcement queries per year. The act of querying the data bank does not deny providers due process rights or bar them from availing themselves of correction procedures, if a report is filed against them in the data bank. Law enforcement agencies are not required to notify subjects that they are under investigation and doing so would most likely compromise an investigation. The commenter additionally claims that law enforcement resources are being wasted. This claim has no evidentiary support, and HRSA feels it is best left to law enforcement officials to make this determination.

*Issue #2:* When commenting on the exemption of the NPDB from Privacy Act access and amendment procedures, commenter expressed support maintaining NPDB access and correction procedures so that NPDB subjects are guaranteed access to, and correction rights for, information reported to the NPDB. However, the commenter feels that shielding law enforcement queries from disclosure to physicians would hamper the physician's ability to ensure the accuracy of the information that has been reported to the NPDB.

*Response:* NPDB access and correction procedures, which guarantee access to, and correction rights for, information reported to the NPDB, are maintained. HRSA disagrees with the statement that disclosure of law enforcement queries would affect a physician's ability to ensure the accuracy of information reported to the data bank. Data bank reports and data bank queries are two separate things. Data bank reports reflect an adverse action taken by a reporting entity, whereas a data bank query is a request for information on a practitioner. Practitioners receive a copy of all reports submitted by a reporting entity along with instructions on correction procedures. If a practitioner elects, they can receive an accounting of entities that have queried them by submitting a self- query. Shielding law enforcement query history does not affect a practitioner's ability to use the report correction procedures. Information on how to dispute the accuracy of a data bank report can be accessed on page F–1 of the NPDB Guidebook at: *http://www.npdb-hipdb.hrsa.gov/resources/NPDBGuidebook.pdf.*

Based on HRSA's review of the public comments, no revisions have been made to the final rule.

## Economic and Regulatory Impact

We have reviewed this final rule in accordance with the provisions of Executive Orders 13563 and 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) and have determined that it will have no major effect on the economy or Federal expenditures. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory

approaches that maximize net benefits, including potential economic, environmental, public health, safety distributive, and equity effects.

The Secretary has determined that this final rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801, and has determined that it does not meet the criteria for a significant regulatory action. In addition, under the Small Business Enforcement Act (SBEA) of 1996, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. The Secretary has reviewed this exemption in accordance with the provisions of the SBEA and certifies that this exemption will not have a significant impact on a substantial number of small entities. Specifically, as indicated above, while the reports of adverse actions to the NPDB will be known to the subjects of the records in the data bank, the access and use of such information by law enforcement agencies would not be known to the subjects of the records, because HRSA believes that disclosure of this information could compromise ongoing law enforcement activities.

Similarly, the final rule will not have effects on State, local, and Tribal governments, and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

The Secretary has reviewed this final rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have ''federalism implications.'' This rule would not ''have substantial direct effects 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.''

The proposals made in this final rule would not adversely affect the following family elements: Family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income, or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

In accordance with the provisions of Executive Order 12866, this final rule was not reviewed by the Office of Management and Budget.

**Paperwork Reduction Act**

This final rule does not have any information collection requirements.

Dated: October 20, 2011.

**Mary Wakefield,**

*Administrator, Health Resources and Services Administration.*

Approved: November 16, 2011.

**Kathleen Sebelius,**

*Secretary.*

**List of Subjects in 45 CFR Part 5b**

Privacy.

## PART 5b—PRIVACY ACT REGULATIONS

Accordingly, 45 CFR part 5b is amended as set forth below:

■ 1. The authority citation for part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Add § 5b.11(b)(2)(ii)(L) to read as follows:

**§ 5b.11 Exempt systems.**

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(L) Investigative materials compiled for law enforcement purposes in the National Practitioner Data Bank (NPDB). (See § 60.16 of this subtitle for access and correction rights under the NPDB by subjects of the Data Bank.)

* * * * *

[FR Doc. 2011–30292 Filed 11–22–11; 8:45 am]

BILLING CODE 4165–15–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 1809

**RIN 2700–AD54**

## NASA Federal Acquisition Regulation Supplement; Responsibility, Suspension and Debarment

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** NASA has adopted as final, without change, a proposed rule amending the NASA FAR Supplement (NFS) to require contracting officers to notify prospective contractors if they are found to be nonresponsible.

**DATES:** *Effective Date:* November 23, 2011.

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

**SUPPLEMENTARY INFORMATION:**

**I. Background**

NASA published a proposed rule in the **Federal Register** at 76 FR 25656 on May 5, 2011, to implement a requirement for contracting officers to notify prospective contractors if they are found to be nonresponsible under FAR Subpart 9.1. Public comments were due on or before July 5, 2011. No comments were received.

**II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**III. Regulatory Flexibility Act**

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it does not impose any new requirements on small entities. This rule only imposes requirements on Government personnel; the impact on the public, including small entities, is the receipt of additional information.

**IV. Paperwork Reduction Act**

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 1809**

Government procurement.

**Sheryl Goddard,**

*Director, Program Operations Division.*

Accordingly, 48 CFR part 1809 is amended as follows:

## PART 1809—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR Part 1809 continues to read as follows:

**Authority:** 42 U.S.C. 2455(a), 2473(c)(1).

## Subpart 1809.1—Responsible Prospective Contractors

■ 2. Section 1809.105–2 is added to subpart 1809.1 to read follows:

**1809.105–2 Determinations and documentation.**

(a) The contracting officer shall provide written notification to a prospective contractor determined not responsible, which includes the basis for the determination. Notification provides the prospective contractor with the opportunity to take corrective action prior to future solicitations.

[FR Doc. 2011–30148 Filed 11–22–11; 8:45 am]

BILLING CODE 7510–01–P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 1850 and 1852

**RIN 2700–AD36**

## Miscellaneous Administrative Changes

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule amends the NASA FAR Supplement (NFS) to make miscellaneous non-substantive administrative changes to be consistent with FAR numbering, FAR terminology, and to allow use of a URL Web site to identify the Agency and Center Ombudsman. These changes are necessary to ensure consistency with the FAR and terminology within NASA.

**DATES:** This direct final rule is effective January 23, 2012 unless Agency receives significant adverse comments by midnight Eastern Standard Time on December 23, 2011. If adverse comment is received, NASA will publish a timely withdrawal of the rule in the **Federal Register**. If no adverse comments are received, NASA will not publish a confirmation document.

**ADDRESSES:** Interested parties may submit comments, identified by RIN number 2700–AD36, via the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Marilyn Seppi, NASA Headquarters, 300 E Street SW., Office of Procurement, Contract Management Division, Washington, DC 20546. Comments may also be submitted by email to *Marilyn.Seppi-1@nasa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Seppi, NASA, Office of Procurement, Contract Management Division; (202) 358–0447; *email: Marilyn.Seppi-1@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Direct Final Rule and Significant Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with NASA's management of procurement regulations and procedures. NASA does not anticipate this direct final rule will result in any changes in the functions or authority of the NFS. NASA expects no opposition to the changes and no significant adverse comments. However, if NASA receives a significant adverse comment, the Agency will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

### A. Background

This final rule makes several administrative changes to the NFS. The numbering in NASA FAR Supplement 1850 is revised to reflect the FAR numbering changes made by Federal Acquisition Circular 2005–21. This final rule deletes the information required to be filled-in by Contracting Officers in NASA FAR Supplement Clause 1852.215–84 when identifying the Ombudsman for the Agency and specific Center. The fill-in is deleted and replaced with a URL Web site where the Agency and Center Ombudsman contact information will be continually updated and maintained by NASA.

This rule also deletes the term ''Commerce Business Daily (CBD)'' and replaces it with the term ''Governmentwide Point of Entry (GPE)'' in NASA FAR Supplement Clauses 1852.217–71 and 1852.217–72 to be consistent with the terminology in FAR Subpart 2.101 Definitions.

### B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this final rule. This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS coverage in accordance with 5 U.S.C. 610. Interested parties should cite 5 U.S.C. 601, *et seq.,* in correspondence. This rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.,* because the changes are administrative and do not impose new requirements.

### D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) is not applicable because the NFS changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR 1850 and 1852

Government procurement.

**Sheryl Goddard,**

*Director, Program Operations Division.*

Accordingly, 48 CFR Part 1850 and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1850 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

■ 2. Part 1850 is revised to read as follows:

## PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

### Subpart 1850.1—Extraordinary Contractual Actions

Sec.

1850.102 Delegation of and limitations of exercise of authority.
1850.102–2 Contract adjustment boards.
1850.103 Contract adjustments.
1850.103–5 Processing cases.

1850.103–570 Submission of request to the Contract Adjustment Board.
1850.103–6 Disposition.
1850.103–670 Implementation of the Contract Adjustment Board's decision.
1850.104 Residual powers.
1850.104–3 Special procedures for unusually hazardous or nuclear risks.
1850.104–370 Subcontractor indemnification requests.
1850.104–70 Lead NASA installation.

## Subpart 1850.1—Extraordinary Contractual Actions

### 1850.102 Delegation of and limitations of exercise of authority.

### 1850.102–2 Contract adjustment boards.

14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board (CAB) as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

### 1850.103 Contract adjustments.

### 1850.103–5 Processing cases.

### 1850.103–570 Submission of request to the Contract Adjustment Board.

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Associate General Counsel for General Law, including in the forwarding letter—

(1) The nature of the case;

(2) The recommended disposition; and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. Any classified information in the material forwarded shall be so identified.

(c) Electronic submittal is preferred for unclassified material.

### 1850.103–6 Disposition.

### 1850.103–670 Implementation of the Contract Adjustment Board's decision.

(a) The contracting officer shall take action authorized in the CAB's decision.

(b) Immediately upon execution, including any required Headquarters approval, of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward a copy of the contractual document to the Associate General Counsel for General Law.

### 1850.104 Residual powers.

### 1850.104–3 Special procedures for unusually hazardous or nuclear risks.

(a) *Indemnification requests.*

(1) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(2) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

(b) Action on indemnification requests.

(1) If recommending approval, the contracting officer shall forward the required information to the Assistant Administrator for Procurement, Program Operations Division, along with the following:

(i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(ii) A recommended Memorandum of Decision. In addition to the applicable requirements of FAR 50.103–6, the Memorandum of Decision shall contain the following:

(A) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s);

(B) A complete discussion of the contractor's financial protection program; and

(C) The extent to, and conditions under, which indemnification is being approved for subcontracts.

(d) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.104–3(b) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk.

### 1850.104–370 Subcontractor indemnification requests.

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.104–3. The prime contractor's request shall provide information responsive to 1850.104–3, FAR 50.104–3, and FAR 50.104–3(b)(1)(i), (ii), (iv), (v), and (vii). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

### 1850.104–70 Lead NASA installation.

(a) Contractors applying for indemnification shall determine which NASA installation has the highest dollar amount of contracts for which indemnification is requested. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. Contractors shall submit a single request and ensure duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(b) The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the affected procurement officers agree to the change. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. In section 1852.215–84, the date clause and paragraph (b) are revised to read as follows:

### 1852.215–84 Ombudsman.

* * * * *

**OMBUDSMAN (NOV 2011)**

* * * * *

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and email address may be found at: *http://prod.nais.nasa.gov/pub/pub_library/Omb.html.* Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the Agency ombudsman identified at the above URL. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify

technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

* * * * *

**1852.215–71 [Amended]**

■ 4. In section 1852.217–71, paragraph (e) is amended by removing ''Commerce Business Daily (CBD)'' and adding ''Governmentwide Point of Entry (GPE)'' in its place.

**1852.215–72 [Amended]**

■ 5. In section 1852.217–72, paragraph (e) is amended by removing ''Commerce Business Daily (CBD)'' and adding ''Governmentwide Point of Entry (GPE)'' in its place.

[FR Doc. 2011–30142 Filed 11–22–11; 8:45 am]

**BILLING CODE 7510–01–P**

# Proposed Rules

Federal Register
Vol. 76, No. 226
Wednesday, November 23, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 416, 417, and 430

**[Docket No. FSIS–2010–0023]**

## Shiga Toxin-Producing Escherichia coli in Certain Raw Beef Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Public meeting; extension of comment period.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on the Agency's implementation plans and methods for controlling non-O157 Shiga toxin-producing *Escherichia coli* in raw, intact and non-intact beef products and product components. To provide stakeholders with ready access to the public meeting, FSIS will conduct the meeting by teleconference. This document provides information on the meeting.

In the Agency's September 20, 2011, document announcing these plans and methods (76 FR 58157), FSIS asked for comments on a variety of issues (76 FR 58164). That comment period, which was originally scheduled to end on November 21, 2011, is now being extended and will end on December 21, 2011.

**DATES:** The teleconference will be held on December 1, 2011, from 1 p.m. to 3 p.m. EST. Submit comments on or before December 21, 2011.

**ADDRESSES:**

*Registration:* Pre-registration for this meeting is required. To pre-register, access the FSIS Web site, at *http://www.fsis.usda.gov/News/Meetings_&_Events/*. We are asking that anyone interested in making a public comment during the teleconference indicate so on the registration form. Call-in information for the teleconference will be provided and will be available on the FSIS Web site at the link listed above.

*Public Comment:* In addition to this teleconference, interested persons may submit comments on the Agency's implementation plans and methods for controlling non-O157 Shiga toxin-producing *Escherichia coli* in raw, intact and non-intact beef products and product components on or before December 21, 2011, using either of the following methods:

*Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to U.S. Department of Agriculture (USDA), FSIS, OPPD, RIMD, Docket Clearance Unit, Patriots Plaza III, 8–164, 355 E Street SW., Washington, DC 20024–3221.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0023. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to: *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Contact Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development, at (202) 205–0495, or by fax at (202) 720–2025.

*For teleconference information:* Contact Joan Lindenberger, Public Affairs Specialist, Congressional and Public Affairs Office, by telephone at (202) 720–6755, or by email to *Joan.lindenberger@fsis.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On September 20, 2011, FSIS published a document regarding non-O157 Shiga toxin-producing (STEC) *Escherichia coli* (*E. coli*). The document also requested comments regarding the Agency's implementation plans and methods for controlling these pathogens in raw, non-intact beef products and product components (76 FR 58157). The comment period was set to end on November 21, 2011.

In the September document, FSIS announced that it intends to carry out verification procedures, including sampling and testing of manufacturing trim and other raw ground beef components, to ensure control of both *E. coli* O157:H7 and six other serogroups of STEC *E. coli* (O26, O45, O103, O111, O121, and O145). FSIS has determined that they, as well as O157:H7, are adulterants of non-intact raw beef products and product components within the meaning of the Federal Meat Inspection Act. The Agency also announced that it is publishing guidance for use in validating commercial pathogen detection test kits that may be capable of detecting the STEC of concern.

Finally, FSIS stated that it is planning a survey of its field personnel who are stationed in beef slaughtering and processing establishments, similar to the 2007 ''checklist'' survey, to determine the processing practices that are employed to reduce the likelihood of contamination of intact and non-intact beef product with these STEC.

In October 2011, the Agency announced its planned revision to the FSIS Microbiology Laboratory Guidebook (MLG) 5B, ''Detection and Isolation of Non-O157 Shiga-Toxin Producing *Escherichia coli* (STEC) from Meat Products,'' to expand laboratory testing for the detection of the six targeted serogroups. Chapters MLG 5B.01, MLG 5B Appendix 1.00, MLG 5B Appendix 2.00 and MLG Appendix 1.06 are now available at *http://www.fsis.usda.gov/Science/Microbiological_lab_guidebook/index.asp.*

FSIS intends to use these methods, beginning March 5, 2012, in testing raw ground beef or in source material used to make ground beef, as well as mechanically tenderized steaks and roasts, for *E. coli* serogroups O26, O45, O103, O111, O121 and O145. If the Agency finds any of those serogroups in these types of products, it will prohibit the product from entering commerce. Like *E. coli* O157:H7, these serogroups can cause severe illness and even death; young children and the elderly are at highest risk. The Centers for Disease Control and Prevention also identifies these particular serogroups as those responsible for the greatest numbers of non-O157 STEC illnesses,

hospitalizations and deaths in the United States.

Beef slaughter and further processing plants should now begin to assess their food safety systems to ensure that they are capable of controlling these pathogens. Given FSIS's planned course of action, establishments that produce the listed products should take steps to ensure that the laboratory test they use to verify the controls they employ is effective in reliably detecting the presence of these pathogens. Establishments can rely upon the FSIS laboratory methodology released in October and updated on November 4, 2011, which has been demonstrated to reliably identify these pathogens, or they can use an equivalent methodology of their choice.

## II. Purpose of the Meeting and Agenda

To provide the public with an opportunity to comment on the Agency's implementation plans and methods for controlling non-O157 STEC in raw, intact and non-intact beef products and product components, FSIS will hold a public meeting by teleconference. The meeting will be held on December 1, 2011. Submit comments on or before December 21, 2011. The teleconference format is being used to provide individuals with easier access to the meeting, particularly those who may lack the resources or time to attend a meeting in person. Access to the 800 number for the teleconference number should be toll free for both domestic and international callers.

Interested persons are encouraged to join the teleconference at or near the start time. FSIS may end the teleconference early if participants are no longer calling in to make comments.

## III. Transcripts

As soon as the meeting transcripts are available, they will be accessible at *http://www.regulations.gov.* The transcripts may be viewed at the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza III, 8–164, 355 E Street SW., Washington, DC 20024–3221.

*Additional Public Notification*

FSIS will announce this document online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on November 18, 2011.

**Alfred V. Almanza,**

*Administrator, FSIS.*

[FR Doc. 2011–30271 Filed 11–18–11; 4:15 pm]

BILLING CODE 3410–DM–P

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## DEPARTMENT OF ENERGY

## 10 CFR Parts 429 and 430

**[Docket No. EERE–2008–BT–TP–0011]**

**RIN 1904–AB78**

## Energy Conservation Program: Test Procedure for Microwave Ovens

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

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Energy (DOE) published an interim final rule on March 9, 2011, amending its test procedures for microwave ovens under the Energy Policy and Conservation Act (EPCA) to provide for the measurement of standby mode and off mode power use by microwave ovens. Those amendments incorporated into the DOE test procedure provisions from the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power,'' First Edition 2005–06 (IEC Standard 62301 (First Edition)). In addition, those amendments adopted in the DOE test procedure definitions of modes based on the relevant provisions from the IEC Standard 62301 Second Edition, Final Draft International Standard (IEC Standard 62301 (FDIS)), as well as language to clarify application of these provisions for measuring standby mode and off mode power consumption in microwave ovens. Just prior to publication of the interim final rule, the IEC replaced the First Edition of this standard with the current Second Edition. This supplemental notice of proposed rulemaking proposes to incorporate the latest edition of IEC Standard 62301.

**DATES:** DOE will accept comments, data, and information regarding this supplemental notice of proposed rulemaking (SNOPR) submitted no later than December 23, 2011. See section V, ''Public Participation,'' for details.

**ADDRESSES:** Any comments submitted must identify the SNOPR on Test Procedures for Microwave Ovens, and provide docket number EERE–2008–BT–TP–0011 and/or regulatory information number (RIN) 1904–AB78. Comments may be submitted using any of the following methods:

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

2. *Email: MicroOven-2008-TP-0011@ee.doe.gov.* Include docket number EERE–2008–BT–TP–0011 and/or RIN 1904–AB78 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket is available for review at *http://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 *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;rpp=10;po=0;D=EERE-2008-BT-TP-0011.* This web page contains a link to the docket for this notice on the *http://www.regulations.gov* site. The *http://www.regulations.gov* web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *http://www.regulations.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or *email: Brenda.Edwards@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:**

Mr. Wes Anderson, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Tel.:* (202) 586–7335. *Email: Wes.Anderson@ee.doe.gov.*

Mr. Ari Altman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Tel.:* (202) 287–6307, *Email: Ari.Altman@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

I. Background and Legal Authority
II. Summary of the Supplemental Notice of Proposed Rulemaking
III. Discussion
A. Products Covered by This Test Procedure Rulemaking
B. Effective Date for the Test Procedure and Date on Which Use of the Test Procedure Would Be Required
C. Incorporation of IEC Standard 62301 (Second Edition)
1. Stable Power Consumption
2. Unstable, Non-Cyclic Power Consumption
3. Cyclic Power Consumption
4. Product Testing
5. Conclusions on Test Methodology
D. Definitions of ''Active Mode,'' ''Standby Mode,'' and ''Off Mode''
E. Specifications for the Test Methods and Measurements for Microwave Oven Standby Mode and Off Mode Testing
F. Compliance With Other EPCA Requirements
1. Test Burden
2. Certification Requirements
IV. Procedural Issues and Regulatory Review
V. Public Participation
A. Submission of Comments
B. Issues on Which DOE Seeks Comment
VI. Approval of the Office of the Secretary

## I. Background and Legal Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.;* ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. 110–140 (Dec. 19, 2007)). Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' including microwave ovens, the subject of today's notice. (42 U.S.C. 6291(1)–(2) and 6292(a)(10))

Under EPCA, this program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use (1) as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) for making representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

### *General Test Procedure Rulemaking Process*

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all residential covered products to include measures of standby mode and off mode energy consumption. Specifically, section 310 of EISA 2007 provides definitions of ''standby mode'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)) and permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The statute requires integration of such energy consumption ''into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—

(i) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or

(ii) Such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible.'' (42 U.S.C. 6295(gg)(2)(A))

Under the statutory provisions adopted by EISA 2007, any such amendment must consider the most current versions of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' and IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment.'' [1] *Id.* At the time of the enactment of EISA 2007, the most current versions of these standards were IEC Standard 62301 (First Edition 2005–06) and IEC Standard 62087 (Second Edition 2008–09).

### *DOE Test Procedure at Appendix I*

Historically, DOE's active mode test procedure for microwave ovens appeared at appendix I to subpart B of Title 10 of the Code of Federal Regulations (CFR).[2] That test procedure

[1] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedures to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. Accordingly, the narrow scope of this particular IEC standard reduces its relevance to today's proposal.

[2] In a final rule published on April 8, 2009 (74 FR 16040), DOE found that no active mode cooking efficiency standards were justified for electric cooking products, including microwave ovens. This

Continued

was part of an October 3, 1997 final rule that also revised the test procedures for other cooking products to measure their efficiency and energy use more accurately. 62 FR 51976. That final rule incorporated portions of IEC Standard 705–1998 and Amendment 2–1993, ''Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purposes'' to measure microwave oven cooking efficiency, but did not address energy use in the standby or off modes. *Id.*

DOE published a notice of proposed rulemaking (NOPR) on October 17, 2008 (hereafter referred to as the October 2008 TP NOPR), in which it proposed incorporating provisions from IEC Standard 62301 (First Edition) into the DOE active mode test procedure, as well as language to clarify application of these provisions for measuring standby mode and off mode power in microwave ovens. 73 FR 62134. DOE held a public meeting on November 14, 2008 (hereafter referred to as the November 2008 public meeting) to hear oral comments on and solicit information relevant to the October 2008 TP NOPR. Interested parties remarked upon, among other things, harmonization of standards and test procedures with those of other countries and international agencies. In particular commenters urged DOE to consider IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01 (IEC Standard 62301 (Second Edition) or ''Second Edition''), which was in the process of being drafted.

EPCA requires DOE to consider the most recent version of IEC Standard 62301. (42 U.S.C. 6295(gg)(2)(A)) After the October 2008 TP NOPR was published, DOE determined that it would consider the revised version of IEC Standard 62301, (*i.e.,* IEC Standard 62301 (Second Edition)), in the microwave oven test procedure rulemaking. DOE anticipated, based on review of drafts of the updated IEC Standard 62301, that the revisions could include different mode definitions. The revised version was expected in July 2009. IEC Standard 62301 (Second Edition) was not published, however, until January 27, 2011.

Because the EISA 2007 amendments to EPCA required DOE to establish test procedures for standby mode and off mode by March 31, 2011, and because DOE is conducting a concurrent energy conservation standards rulemaking for standby and off mode energy use, discussed below, DOE published a supplemental notice of proposed rulemaking (SNOPR) on July 22, 2010 (hereafter referred to as the July 2010 TP SNOPR) proposing mode definitions based on those in the then current draft version of IEC Standard 62301 (Second Edition), designated as IEC Standard 62301 Second Edition, Committee Draft for Vote (IEC Standard 62301 (CDV)). 75 FR 42612, 42620–23 (July 22, 2010). DOE noted in the July 2010 TP SNOPR that IEC Standard 62301 (CDV) contained proposed amendments to IEC Standard 62301 (First Edition), including new mode definitions based on those proposed in IEC Standard 62301 (Second Edition), Committee Draft 2 (IEC Standard 62301 (CD2)) [3] and which addressed comments received by interested parties in response to IEC Standard 62301 (CD2). As a result of this continued refinement on the basis of public comment, DOE stated that it believed that those most recent mode definitions represented the best definitions available for the analysis in support of this rulemaking. 75 FR 42612, 42621.

DOE held a public meeting on September 16, 2010 (hereafter referred to as the September 2010 public meeting), to hear oral comments on and solicit information relevant to the July 2010 TP SNOPR. Interested parties remarked upon, among other things, covered products, incorporation of IEC Standard 62301 (First Edition), mode definitions, and testing procedures. On October 29, 2010, the IEC released a finalized draft version of IEC Standard 62301 (Second Edition), IEC Standard 62301 (FDIS).

On March 9, 2011, DOE published an interim final rule (hereafter referred to as the March 2011 Interim Final Rule) amending the test procedures for microwave ovens. 76 FR 12825. The March 2011 Interim Final Rule incorporated by reference specific clauses from IEC Standard 62301 (First Edition) regarding test conditions and testing procedures for measuring the average standby mode and average off mode power consumption into the microwave oven test procedure. DOE also incorporated into the microwave oven test procedure definitions of ''active mode,'' ''standby mode,'' and ''off mode'' based on the definitions provided in IEC Standard 62301 (FDIS). DOE further adopted language to clarify the application of clauses from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power in the interim final rule. Specifically, DOE defined the test duration for cases in which the measured power is not stable (*i.e.,* varies over a cycle), recognizing that the power consumption of microwave oven displays can vary based on the displayed clock time. 76 FR 12825, 12828.

The amendments adopted in the March 2011 Interim Final Rule became effective on April 8, 2011. However, DOE noted that in order to ensure that the amended test procedure adequately addresses the EISA 2007 requirement to consider the most recent version of IEC Standard 62301, and recognizing that the IEC issued IEC Standard 62301 (Second Edition) in January of 2011, DOE issued the microwave oven test procedure as an interim final rule and offered an additional 180-day comment period to consider whether any changes should be made to the interim final rule in light of publication of IEC Standard 62301 (Second Edition). DOE stated that it would consider these comments and, to the extent necessary, publish a final rulemaking incorporating any changes. 76 FR 12825, 12830–31. In response to the March 2011 Interim Final Rule, interested parties commented, among other things, that DOE should incorporate by reference IEC Standard 62301 (Second Edition) for optimal international harmonization, to give clarity and consistency to the regulated community and to decrease the testing burden.

As stated above, DOE is considering amended microwave oven energy conservation standards addressing standby and off mode energy use concurrently with the test procedure rulemaking process. The National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100–12), which amended EPCA, established prescriptive standards for kitchen ranges and ovens, but no standards were established for microwave ovens. (42 U.S.C. 6295(h)(1)) The NAECA amendments also required DOE to conduct two cycles of rulemakings to determine whether to revise the standard. (42 U.S.C. 6295(h)(2)) DOE undertook the first cycle of these rulemakings and issued a

rulemaking completed the second cycle of rulemakings required by the NAECA amendments to EPCA. (42 U.S.C. 6295(h)(2)) In its analysis for the second cycle of rulemakings, DOE determined that the microwave oven test procedure provisions to measure cooking efficiency do not produce accurate and repeatable test results. DOE was unaware of any test procedures that had been developed that addressed the concerns with the DOE microwave oven cooking efficiency test procedure. DOE, therefore, repealed the regulatory provisions establishing the active mode cooking efficiency test procedure for microwave ovens under EPCA in a final rule published on July 22, 2010 (the July 2010 TP Final Rule). 75 FR 42579. DOE also published a notice of a public meeting to discuss a separate rulemaking process to replace the repealed provisions for measuring microwave oven energy efficiency in active mode on July 22, 2010. 75 FR 42611.

[3] IEC Standard 62301 (CD2) was the draft version immediately preceding IEC Standard 62301 (CDV).

final rule on September 8, 1998 (63 FR 48038), in which DOE found that no amended standards were justified for electric cooking products, including microwave ovens.

DOE initiated the second cycle of energy conservation standards rulemakings for cooking products by publishing a framework document covering, in part, microwave ovens, and giving notice of a public meeting and the availability of the framework document. 71 FR 15059 (March 27, 2006). On November 15, 2007, DOE published an advance notice of proposed rulemaking (ANOPR) (72 FR 64432) (hereafter the November 2007 ANOPR) concerning energy conservation standards for commercial clothes washers and residential dishwashers, dehumidifiers, and cooking products, including microwave ovens (collectively, appliance standards). In the November 2007 ANOPR, DOE determined that energy consumption by microwave ovens in the standby mode represents a significant portion of microwave oven energy use, and that a standard regulating such energy consumption would likely have significant energy savings. 72 FR 64432, 64441–42. Before standby power could be included in an efficiency standard for microwave ovens, however, test procedures for the measurement of standby power would be required. *Id.*

On December 13, 2007, DOE held a public meeting to receive comments on the November 2007 ANOPR (hereafter referred to as the December 2007 public meeting). At the December 2007 public meeting, DOE presented the possibility that test standard IEC Standard 62301 (First Edition) could be incorporated by reference into DOE's microwave oven test procedure to measure standby power. DOE also discussed clarifications to the IEC Standard 62301 (First Edition) test conditions, including a requirement that, if the measured power were not stable, the standby mode power test would be run for a period of 12 hours with an initial clock setting of 12 a.m. This would permit more accurate measurement of average standby power consumption.

DOE published a NOPR for the appliance standards rulemaking on October 17, 2008, in which it tentatively concluded that a standard for microwave oven standby mode and off mode energy consumption would be technologically feasible and economically justified. 73 FR 62034. DOE received responses to the NOPR from interested parties regarding the harmonization of standards and test procedures with those of other countries and international agencies. As a result of these comments, DOE decided to consider the revised version of IEC Standard 62301 (*i.e.,* IEC Standard 62301 (Second Edition)) in the development of energy conservation standards for the standby mode and off mode power consumption of microwave ovens. As stated above, because the issuance of the revised version did not occur until January 27, 2011, DOE considered the most recent draft at the time, which was version IEC Standard 62301 (CDV) for the July 2010 TP SNOPR and IEC Standard 62301 (FDIS) for the March 2011 TP Interim Final Rule. 75 FR 42612, 42614; 76 FR 12825, 12831–33.

## II. Summary of the Supplemental Notice of Proposed Rulemaking

As discussed in section I, DOE published the March 2011 Interim Final Rule to provide an opportunity for it to fully consider whether any changes should be made in light of publication of IEC Standard 62301 (Second Edition). For this reason, and, based upon the public comment received on the March 2011 Interim Final Rule, DOE decided to further analyze IEC Standard 62301 (Second Edition), which published on January 27, 2011. Consistent with its statutory mandate, DOE has reviewed this latest version of the IEC standard and believes that it improves some measurements of standby mode and off mode energy use. Accordingly, DOE proposes in today's SNOPR to incorporate certain provisions of the IEC Standard 62301 (Second Edition), along with clarifying language, into the DOE test procedures for microwave ovens adopted in the March 2011 Interim Final Rule. In addition, DOE proposes in today's SNOPR to make minor editorial changes in 10 CFR part 430, subpart B, appendix I, section 2.2.1.1 to aid the reader by presenting the electrical supply voltages consistently for microwave ovens and conventional cooking products, and also in section 1.12 to clarify the alternative use of metric units for various measurements and calculations in the conventional cooking products test procedure. For the reader's convenience, DOE has reproduced in this SNOPR the entire body of regulatory text from the March 2011 Interim Final Rule for the microwave oven test procedure, further amended as appropriate according to today's proposals.

As noted above, EPCA requires that DOE determine whether a proposed test procedure amendment would alter the measured efficiency of a product, thereby requiring adjustment of existing standards. (42 U.S.C. 6293(e)) Because there are currently no Federal energy conservation standards for microwave ovens (including energy use in the standby and off modes), such requirement does not apply to this rulemaking. DOE is conducting a concurrent rulemaking process to consider standby and off mode energy conservation standards and will consider this test procedure rulemaking as any standards are developed.

## III. Discussion

### *A. Products Covered by This Test Procedure Rulemaking*

DOE defines ''microwave oven'' as a class of kitchen ranges and ovens which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy. 10 CFR 430.2 In the March 2011 Interim Final Rule, DOE determined that this regulatory definition includes all ovens equipped with microwave capability, including combination ovens (*i.e.,* microwave ovens that incorporate convection features and possibly other means of cooking) because they are capable of cooking or heating food by means of microwave energy. 76 FR 12825, 12828–30 (March 9, 2011). DOE also determined that the test procedure would not apply to the type of cooking appliance classified by DOE regulations as a microwave/conventional range, which has separate compartments or components consisting of a microwave oven, a conventional oven, and a conventional cooking top. *Id.* at 12830. DOE noted that it will evaluate any differences among microwave ovens and combination microwave ovens, including installation configurations and heating features that may warrant different product classes or energy conservation standards during its microwave oven standards rulemaking. *Id.* at 12829–30. DOE also noted that defining a covered product for the purposes of measuring standby mode and off mode energy use does not require that active mode provisions be specified for that same product. When considering future active mode test procedure amendments, DOE will evaluate the suitability of separate provisions for combination microwave ovens to measure the energy performance of heating components other than the microwave portion. *Id.*

DOE also noted in the March 2011 Interim Final Rule that, based on its limited testing of a small sample of over-the-range microwave ovens, as well as more extensive testing of a sample of over-the-range combination microwave ovens, DOE did not identify any different standby or off modes as

compared to countertop microwave-only units. Thus, DOE determined that the measures adopted in the March 2011 Interim Final Rule provide representative measures of standby mode and off mode energy use in countertop and over-the-range configurations of microwave ovens and combination microwave ovens, and did not provide an exclusion for over-the-range units in the definition of covered products. Differences in energy use in these modes between countertop and over-the-range configurations would be evaluated as part of the energy conservation standards rulemaking addressing standby mode and off mode for microwave ovens. *Id.*

The Association of Home Appliance Manufacturers (AHAM) objected to the definition of covered products in the March 2011 Interim Final Rule because it does not consider the effects on a possible future active mode test procedure. AHAM stated that an active mode test procedure is likely to have inherent complexities, as indicated by DOE's repeal of the active mode test procedure, and not considering active mode in the definition of covered products will only add to those complexities. AHAM stated that DOE should address this issue now and would work with DOE to determine how the differences between microwave-only ovens, over-the-range microwave ovens, and combination ovens should be addressed. (AHAM, No. 31 at p. 2) [4] Whirlpool Corporation (Whirlpool) supported the comments made by AHAM. (Whirlpool, No. 30 at p. 1)

As discussed above, DOE will evaluate the suitability of separate provisions for measuring the active mode energy use of different heating components or other product features related to installation configuration when considering future amendments to the microwave oven test procedure to address active mode. DOE may consider at that time whether amendments to the definition of ''microwave oven'' are necessary for the development of an active mode test procedure. DOE also notes that it makes determinations regarding the scope of covered products, including potential grouping in product classes, in the energy conservation standards rulemaking process. As discussed in the March 2011 Interim Final Rule, under the definition of ''microwave oven,'' all ovens equipped with microwave capability would be considered covered products, and that for the standby mode and off mode test procedure, the same testing methodology can be used for microwave-only, over-the-range microwave ovens, and combination microwave ovens. 76 FR 12825, 12829–30 (Mar. 9, 2011). For these reasons, DOE is not proposing amendments to the definition of ''microwave oven'' in 10 CFR 430.2 in today's SNOPR.

AHAM commented that the determination of covered products in the March 2011 Interim Final Rule is overly broad. AHAM stated that combination ovens are now covered products under the definition of ''microwave oven'' according to the March 2011 Interim Final Rule, but the adopted test procedure fails to make that clear. AHAM stated that, according to the March 2011 Interim Final Rule, a free-standing range with microwave capability would be excluded, but this is not clear from the definition. AHAM continues to believe that DOE should not consider combination ovens as meeting the definition of ''microwave oven,'' but that DOE could alternatively clarify the intent to include combination ovens as covered products by defining the term ''combination oven.'' (AHAM, No. 31 at p. 2) Whirlpool supported the comments made by AHAM. (Whirlpool, No. 30 at p. 1)

Although DOE provided a definition of a combination oven as a microwave oven that incorporates convection features and possibly other means of cooking in the March 2011 Interim Final Rule, it agrees that additional clarity would be gained by codifying a definition. To that end, DOE is proposing to add such a definition of ''combination oven'' to the definitions in 10 CFR 430.2. DOE further notes that the definition of ''microwave oven'' adopted in the March 2011 Interim Final Rule specifies that the appliance would consist of a compartment designed to cook or heat food by means of microwave energy and would include combination ovens. However, 10 CFR 430.2 additionally defines a microwave/conventional range as distinct from a microwave oven, although it incorporates a microwave oven along with a conventional oven and conventional cooking top. Because the test procedure applies only to microwave ovens and not to microwave/conventional ranges, a free-standing range with microwave capability in one compartment and a conventional oven in a separate compartment would not be a covered product under this rulemaking. Additionally, a range incorporating a single compartment with microwave capability and other cooking or heating means, along with a conventional cooking top, would not be considered a covered product because the cooking top portion would exclude the range from the relevant portion of the definition of ''microwave oven'' (*e.g.,* a compartment designed to cook or heat food by means of microwave energy.)

AHAM also commented that, based on DOE's statement that the definition of combination microwave oven as a covered product does not hinge on which cooking mode is primary (*i.e.,* radiant heating or microwave energy) and that all ovens equipped with microwave capability would be considered a covered product under the March 2011 Interim Final Rule, a product that uses radiant heat for cooking, but also uses microwave energy as a secondary cooking mode, would be covered as a microwave oven as well as a conventional cooking product, and such a product should not be twice regulated. AHAM stated, therefore, that such a product should not be covered by the definition of microwave oven. (AHAM, No. 31 at p. 2) Whirlpool supported the comments made by AHAM. (Whirlpool, No. 30 at p. 1)

DOE defines ''conventional oven'' as ''a class of kitchen ranges and ovens which is a household cooking appliance consisting of one or more compartments intended for the cooking or heating of food by means of either a gas flame or electric resistance heating. It does not include portable or countertop ovens which use electric resistance heating for the cooking or heating of food and are designed for an electrical supply of approximately 120 volts.'' 10 CFR 430.2 Because this definition does not provide for the option of cooking or heating food by means of microwave energy, DOE concludes that a product comprising a single compartment that uses both radiant heat and microwave energy for cooking would be covered only under the definition of ''microwave oven,'' which includes combination microwave ovens (including those with radiant heating elements) regardless of which is considered the primary cooking mode, and would not be covered as a conventional cooking product.

DOE acknowledges that the definition of ''microwave oven'' considers only a single compartment, while the definition of ''conventional oven'' allows for the possibility of one or more compartments. DOE believes that, for products that consist of multiple oven

[4] A notation in the form ''AHAM, No. 31 at p. 2'' identifies a written comment: (1) Made by the Association of Home Appliance Manufacturers; (2) recorded in document number 31 that is filed in the docket of the microwave oven test procedures rulemaking (Docket No. EERE–2008–BT–TP–0011) and available for review at *http://www.regulations.gov;* and (3) which appears on page 2 of document number 31.

compartments but no integral cooking top portion, the compartment(s) that provide for cooking by means of microwave energy in combination with any other cooking or heating means would be classified as microwave ovens, while the compartment(s) that cook or heat food by means of a gas flame or electric resistance heating without the use of microwave energy would be classified as conventional ovens.

DOE notes that its regulations contain certain provisions allowing a manufacturer to seek a waiver from the test procedure requirements for covered consumer products if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternative test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

As discussed in section III.B, the amendments to the DOE microwave oven test procedure codified in the CFR would clarify that the procedures and calculations adopted in the final rule need not be performed to determine compliance with energy conservation standards, until compliance with any final rule establishing amended energy conservation standards for microwave ovens in standby mode and off mode is required. At that time, any application for waiver from the test procedure may be submitted. As noted in section I, DOE is currently conducting an energy conservation standards rulemaking to address microwave oven standby power consumption. DOE also notes that determinations as to whether certain products are considered covered under DOE's regulations are made in the energy conservation standards rulemaking.

AHAM commented that it opposes the inclusion of thermal elements designed for surface browning in the definition of microwave ovens. AHAM noted DOE repealed the active mode test procedure for microwave ovens because DOE determined it was not repeatable or reproducible and by including microwave ovens with thermal elements in the definition of microwave ovens, that same unworkable situation would be created here. According to AHAM, there is currently no repeatable and reproducible test procedure for microwave ovens with thermal elements, and those units with thermal elements may use different amounts of energy than units with microwave-only capability. In addition, AHAM commented that there are no agreed-upon definitions as to what constitutes ''browning.'' AHAM urged DOE to not include thermal elements designed for surface browning in the definition of ''microwave oven.'' (AHAM, No. 31 at pp. 2–3) Whirlpool supported the comments made by AHAM. (Whirlpool, No. 30 at p. 1)

As discussed above, DOE may consider amendments to the test procedure to measure the active mode energy use in a separate test procedure rulemaking process, including the methods for measuring the energy use of thermal elements. As discussed in the March 2011 Interim Final Rule, under the definition of ''microwave oven,'' all ovens equipped with microwave capability would be considered a covered products, including those with thermal elements. 76 FR 12825, 12830 (Mar. 9, 2011). DOE also makes determinations regarding the scope of covered products in the energy conservation standards rulemaking process. As a result, DOE is not proposing amendments to the definition of ''microwave oven'' in 10 CFR 430.2 to exclude thermal elements designed for surface browning in today's SNOPR.

AHAM commented that DOE should again consider the differences between countertop microwave ovens and over-the-range microwave ovens, noting there are significant differences both in energy consumption and consumer utility. AHAM noted that countertop microwave ovens are typically designed for room temperature ambient conditions, whereas over-the-range microwave ovens must be designed to withstand the higher temperatures above a range. AHAM commented that features such as the display require more energy for over-the-range microwave ovens to withstand the higher temperatures, and that Vacuum Fluorescent Displays (VFDs) are used more often in such units because of their reliability at higher temperatures, but require higher current to operate in both active and standby modes. AHAM noted that countertop microwave ovens can use lower-power Light Emitting Diode (LED) displays due to the lower ambient temperatures. AHAM added that other energy-using features typically exist only in over-the-range microwave ovens, such as air venting and circulation, forced cooling, and cooktop lighting. (AHAM, No. 31 at p. 3) Whirlpool supported the comments made by AHAM. (Whirlpool, No. 30 at p. 1)

As discussed in the March 2011 Interim Final Rule, DOE did not identify during its research and testing any different standby or off modes for over-the-range microwave-only and combination microwave ovens as compared to countertop microwave-only units. DOE noted that differences in energy use, installation configurations, and heating features between countertop and over-the-range configurations that may warrant different product classes would be evaluated as part of the energy conservation standards rulemaking addressing standby mode and off mode for microwave ovens. 76 FR 12825, 12829–30 (Mar. 9, 2011). DOE may consider the suitability of separate provisions for over-the-range microwave ovens to measure the energy performance of active mode features such as air venting and circulation, forced cooling, and cooktop lighting when considering future active mode test procedure amendments.

Intirion Corporation (Intirion) commented that its product—an integrated microwave oven, refrigerator/freezer, and two charging stations (''MicroFridge'')—should not be considered a covered product under the proposed energy conservation standards for microwave oven standby power and should be considered exempt from the standard. (Intirion, No. 29 at p. 1) Intirion commented that the MicroFridge should be considered a combination appliance which, according to Intirion, is significantly different from a typical microwave oven. Intirion also noted that, although the MicroFridge can either be shipped as a pre-assembled combination appliance or as a separate unit (with the consumer attaching the microwave oven and refrigerator/freezer on-site), the intention of the MicroFridge is to be used as a combination appliance. (Intirion, No. 29 at pp. 1–2) The MicroFridge allows the consumer to power a microwave oven, refrigerator/freezer, and charging stations from a single outlet. Intirion commented that the microwave oven controller in the MicroFridge also manages electrical flow for the microwave oven, refrigerator/freezer, and charging stations to prevent the electrical circuit from overloading. When the microwave

oven is in use, the electrical flow to the charging stations and refrigerator are turned off. (Intirion, No. 29 at p. 2) Intirion further commented that when considering the microwave oven exclusive of the charging stations and refrigerator electrical management, the microwave oven LED clock display and microcontroller consume 2 watts (W) in standby mode.[5] (Intirion, No. 29 at pp. 2–3) Intirion requested that DOE issue a waiver for the MicroFridge microwave oven from the proposed energy conservation standards for microwave oven standby power because its characteristics make the standby power standards not applicable, and a wavier should be granted. (Intirion, No. 29 at p. 4)

In response, as discussed above for products that consist of multiple oven compartments but no integral cooking top portion, DOE notes that its regulations contain certain provisions allowing a manufacturer to seek a waiver from the test procedure requirements for covered consumer products if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). DOE also notes that determinations as to whether certain products are considered covered under DOE's regulations are made in the energy conservation standards rulemaking.

*B. Effective Date for the Test Procedure and Date on which Use of the Test Procedure Would be Required*

The effective date of the standby and off mode test procedures for microwave ovens would be 30 days after the date of publication of the final rule. DOE's amended test procedure regulations codified in the CFR would clarify, though, that the procedures and calculations adopted in the final rule need not be performed to determine compliance with energy conservation standards, until compliance with any final rule establishing amended energy conservation standards for microwave ovens in standby mode and off mode is required. However, as of 180 days after publication of the final rule, any representations as to the standby mode and off mode energy consumption of the products that are the subject of this rulemaking would need to be based upon results generated under the applicable provisions of this test procedure. (42 U.S.C. 6293(c)(2))

*C. Incorporation of IEC Standard 62301 (Second Edition)*

As noted above, EPCA, as amended by EISA 2007, requires that test procedures be amended to include standby mode and off mode energy consumption, taking into consideration the most current versions of IEC Standards 62301 and 62087. (42 U.S.C. 6295(gg)(2)(A)) The March 2011 Interim Final Rule incorporated in the test procedures for microwave ovens relevant provisions from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power. DOE reviewed the IEC Standard 62301 (First Edition) and concluded that it would be generally applicable to microwave ovens, although some clarification would be needed. Specifically, DOE adopted a specific standby mode power measurement methodology for units in which power varies as a function of displayed time. 76 FR 12825, 12837–12840 (Mar. 9, 2011). With these clarifications in place, the March 2011 Interim Final Rule referenced IEC Standard 62301 (First Edition) for the standby mode and off mode wattage measurements.

DOE noted in the March 2011 Interim Final Rule that there were significant differences between IEC Standard 62301 (First Edition) and IEC Standard 62301 (FDIS), which was the latest draft version of IEC Standard 62301 (Second Edition) available during the drafting of the interim final rule. *Id.* at 12832–33. For example, IEC Standard 62301 (FDIS) clarified certain provisions, such as the definition of ''standby mode'' and ''off mode'' to allow for the measurement of multiple standby power modes. IEC Standard 62301 (FDIS) incorporated responses to comments from multiple national committees from member countries on several previous draft versions, and thus, DOE believed, it provided the best available mode definitions. *Id.* After considering both versions of IEC Standard 62301 (*i.e.,* First Edition and FDIS), DOE concluded in the March 2011 Interim Final Rule that the definitions of ''standby mode,'' ''off mode,'' and ''active mode'' provided in IEC Standard 62301 (FDIS) were more useful, in that they expanded upon the EPCA mode definitions and provided additional guidance as to which functions would be associated with each mode. Therefore, DOE adopted the definitions of ''standby mode,'' ''off mode,'' and ''active mode'' based on the definitions provided in IEC Standard 62301 (FDIS) in the March 2011 Interim Final Rule. *Id.* at 12836.

DOE noted in the March 2011 Interim Final Rule that IEC published the final version of IEC Standard 62301 (Second Edition) on January 27, 2011, too late to be incorporated into the rulemaking. DOE also noted that significant changes in the methodology of IEC Standard 62301 were first introduced only at the IEC Standard 62301 (FDIS) stage. DOE noted that those changes had not been, at that time, the subject of significant public comment from interested parties, nor had DOE had the opportunity to conduct a thorough analysis of those provisions. Id. at 12833. Given the pending statutory deadline for issuance of a microwave oven standard and the recent adoption of IEC Standard 62301 (Second Edition), DOE decided to base the test procedure amendments in the March 2011 Interim Final Rule (other than the mode definitions) on the provisions of IEC Standard 62301 (First Edition). *Id.*

In response to the March 2011 Interim Final Rule, AHAM commented that DOE should incorporate by reference IEC Standard 62301 (Second Edition) as published. AHAM also commented that all of the provisions incorporated by reference should be from IEC Standard 62301 (Second Edition) and not reference sections from both IEC Standard 62301 (First Edition) and IEC Standard 62301 (Second Edition), including any draft versions. AHAM noted that the Second Edition has been vetted through an extensive consensus method of standards development that includes dozens of countries. AHAM also noted that IEC Standard 62301 (Second Edition) contains a number of important clarifications not present in the First Edition. AHAM commented that incorporation by reference of the Second Edition will allow for optimum international harmonization, which gives clarity and consistency to the regulated community, and also significantly decreases the testing burden on manufacturers. AHAM stated that if DOE maintains its incorporation by reference of IEC Standard 62301 (First Edition), regulated parties would have to test products under one test procedure in the United States and a different procedure in other countries, adding significant testing burden. (AHAM, No. 31 at pp. 3–4; AHAM, DOE–HQ–2011–0014, No. 10 at pp. 3–

[5] Aside from the microwave oven LED display and microcontroller, Intirion noted that the Microfridge consumes 0.2W for 2 front green LED lamps, 0.5W each for two front outlets, and 0.5W for a rear outlet. The total standby power of the MicroFridge is thus 3.7W.

4[6]) Whirlpool supported the comments made by AHAM. (Whirlpool, No. 30 at p. 1)

As discussed in section I, DOE published the March 2011 Interim Final Rule to provide an opportunity for it to fully consider whether any changes should be made in light of publication of IEC Standard 62301 (Second Edition). DOE agrees with the commenters that IEC Standard 62301 (Second Edition) is an internationally-accepted test procedure for measuring standby power in residential appliances, and that it provides clarification to certain sections as compared to the First Edition, as discussed in the following paragraphs.

Section 4, paragraph 4.4 of the Second Edition revises the power measurement accuracy provisions of the First Edition. A more comprehensive specification of required accuracy is provided in the Second Edition, which depends upon the characteristics of the power being measured. Testers using the Second Edition are required to measure the crest factor and power factor of the input power, and to calculate a maximum current ratio (MCR) (paragraph 4.4.1 of the Second Edition). The Second Edition then specifies calculations to determine permitted uncertainty in MCR. DOE notes, however, that the allowable uncertainty is the same or less stringent than the allowable uncertainty specified in the First Edition, depending on the value of MCR and the power level being measured (see Table III.1 for examples). This change in the allowable uncertainty, however, maintains sufficient accuracy of measurements under a full range of possible measured power levels without placing undue demands on the instrumentation. These power measurement accuracy requirements were based upon detailed technical submissions to the IEC in the development of IEC Standard 62301 (FDIS), which showed that commonly-used power measurement instruments were unable to meet the original requirements for certain types of loads. Therefore, DOE believes that the incremental testing burden associated with the additional measurements and calculations is offset by the more reasonable requirements for testing equipment, while maintaining measurement accuracy deemed acceptable and practical by voting members for IEC Standard 62301 (Second Edition). For these reasons, DOE proposes in today's supplemental notice to incorporate by reference in 10 CFR part 430, subpart B, appendix I, section 2.9.1.3 the power equipment specifications in section 4, paragraph 4.4 of IEC Standard 62301 (Second Edition).

TABLE III. 1—COMPARISON OF ALLOWABLE UNCERTAINTY IN MEASURED POWER

| Measured power (W) | Allowable uncertainty (W) | | |
|---|---|---|---|
| | IEC 62301 (first edition) | IEC 62301 (second edition) | |
| | | MCR = 5 | MCR = 15 |
| 5.0 | 0.1 | 0.1 | 0.14 |
| 2.0 | 0.04 | 0.04 | 0.056 |
| 1.0 | 0.02 | 0.02 | 0.028 |
| 0.5 | 0.01 | 0.02 | 0.02 |
| 0.2 | 0.01 | 0.02 | 0.02 |

DOE notes that section 5, paragraph 5.2 of IEC Standard 62301 (Second Edition) maintains the installation and setup procedures incorporated by reference in the microwave oven test procedure in the March 2011 Interim Final Rule from the First Edition. These provisions require that the appliance be prepared and set up in accordance with manufacturer's instructions, and that if no instructions are given, then the factory or ''default'' settings shall be used, or where there are no indications for such settings, the appliance is tested as supplied. Additionally, IEC Standard 62301 (Second Edition) adds certain clarifications to the installation and setup procedures in section 5, paragraph 5.2 of the First Edition regarding products equipped with a battery recharging circuit for an internal battery, as well as instructions for testing each relevant configuration option identified in the product's instructions for use. DOE is not aware of any microwave oven with an internal battery, or with a recharging circuit for such a battery. DOE also believes that a requirement to separately test each configuration option could substantially increase test burden and potentially conflicts with the requirement within the same section to set up the product in accordance with the instructions for use or, if no such instructions are available, to use the factory or ''default'' settings. Therefore, DOE tentatively concludes that the portions of the installation instructions in section 5, paragraph 5.2 of IEC Standard 62301 (Second Edition) pertaining to batteries and the requirement for the determination, classification, and testing of all modes associated with every combination of available product configuration options (which may be more numerous than the modes associated with operation at the default settings) are not appropriate for the microwave oven test procedures. Accordingly, DOE is proposing qualifying language in the test procedure amendments at 10 CFR part 430, subpart B, appendix I, section 2.1.3 to disregard those portions of the installation instructions.

The Second Edition also contains provisions for the power supply (section 4.3) and power-measuring instruments (section 4.4). Paragraph 4.3.2 requires that the value of the harmonic content of the voltage supply be recorded during the test and reported. As described previously, paragraph 4.4.1 requires the instrument to measure the crest factor and maximum current ratio. Paragraph 4.4.3 requires the instrument to be capable of measuring the average power or integrated total energy consumption over any operator-selected time interval. DOE is aware of commercially available power measurement instruments that can perform each of these required measurements individually. However, DOE is also aware that certain industry-standard instruments, such as the Yokogawa WT210/WT230 digital power meter and possibly others, are unable to measure harmonic content or crest

[6] A notation in the form ''AHAM, DOE–HQ–2011–0014, No. 10 at pp. 3–4'' identifies a written comment: (1) Made by AHAM; (2) recorded in document number 10 that is filed in the docket of the Request for Information on reducing regulatory burden (Docket No. DOE–HQ–2011–0014) and available for review at *http://www.regulations.gov;* and (3) which appears on pages 3 through 4 of document number 10.

factor while measuring average power or total integrated energy consumption. DOE is concerned that laboratories currently using power-measuring instruments without this capability would be required to purchase, at potentially significant expense, additional power-measuring instruments that are able to perform all these measurements simultaneously. Therefore, DOE proposes in 10 CFR part 430, subpart B, appendix I, sections 2.2.1.2 and 2.9.1.3 that if the power-measuring instrument is unable to perform these measurements during the actual test measurement, it would be acceptable to measure the total harmonic content, crest factor, and maximum current ratio immediately before and immediately after the actual test measurement to determine whether the requirements for the power supply and power measurement have been met. DOE requests comment on whether this represents an acceptable interpretation of the power measurement requirements of the Second Edition.

The other major changes in the Second Edition related to the measurement of standby mode and off mode power consumption in covered products involve measurement techniques and specification of the stability criteria required to measure that power. The Second Edition contains more detailed techniques to evaluate the stability of the power consumption and to measure the power consumption for loads with different stability characteristics. According to the Second Edition, the user is given a choice of measurement procedures, including sampling methods, average reading methods, and a direct meter reading method. DOE evaluated these new methods in terms of test burden and improvement in results as compared to those methods adopted in the March 2011 Interim Final Rule, which were based on IEC Standard 62301 (First Edition).

In the March 2011 Interim Final Rule, DOE adopted provisions requiring that microwave oven standby mode and off mode power be measured using section 5, paragraph 5.3 of IEC Standard 62301 (First Edition). DOE also adopted additional specific methodology for microwave ovens in which power varies as a function of the time displayed. In particular, based on DOE's testing, DOE adopted a requirement for these microwave ovens to set the display time to 3:23 and allowing a 10-minute stabilization period prior to a 10-minute measurement period for the display time of 3:33 to 3:42, based on the average power approach of section 5, paragraph 5.3.2(a) of IEC Standard 62301 (First Edition). DOE stated that this method provides a valid measure of standby energy use for those microwave ovens with power consumption varying according to the time displayed on the clock. 76 FR 12825, 12838–40 (Mar. 9, 2011).

For today's supplemental notice, to determine the potential impacts of referencing methodology from IEC Standard 62301 (Second Edition) rather than from the First Edition, DOE compared the provisions allowed by each under different scenarios of power consumption stability, as discussed in the following sections.

1. Stable Power Consumption

According to section 5, paragraph 5.3.1 of IEC Standard 62301 (First Edition), after an initial stabilization period of 5 minutes, power consumption is defined as stable if it varies by less than 5 percent over a subsequent measurement period of 5 minutes. In such a case, a direct reading may be made at the end of the measurement period. Based on this methodology, which was adopted in the March 2011 Interim Final Rule for microwave ovens other than units in which power varies as a function of displayed time, the total test time would be at minimum 10 minutes (comprised of a minimum 5-minute stabilization period, followed by a minimum 5-minute period during which the stability criterion could be evaluated and a direct power reading taken.) Alternatively, the tester may select an average power or accumulated energy approach, again with a minimum 5-minute measurement period. The average power approach would simply require a different reading to be taken from the instrument (true average power instead of a direct reading of instantaneous power), while the accumulated energy approach would require the calculation of power by dividing the accumulated energy by the duration of the measurement period.

In comparison, section 5, paragraph 5.3.4 of IEC Standard 62301 (Second Edition) specifies a direct meter reading method that can be used for stable power consumption, in which a minimum 30-minute stabilization period must be observed, followed by a first power measurement. After an additional period of 10 minutes, a second power measurement is taken. If the average of the two measurements divided by the time interval between them meets certain threshold criteria, then the power consumption is considered to be the average of the two power measurements. Thus, the total test period would still be at minimum 40 minutes. DOE agrees that this method likely improves the validity of the test results, as it is a more stringent measure of the stability of the power consumption over a longer period of time than the First Edition requires. However, if the threshold criteria are not met at the end of the test, a different measurement method must be used, increasing test time and complexity. Further, the Second Edition specifies that the direct reading method shall not be used for verification purposes. Both of these qualifications potentially increase test burden as compared to the First Edition, possibly requiring the tester to conduct the more complex methodology of the methods available under the Second Edition.

DOE notes that section 5, paragraph 5.3.2 of IEC Standard 62301 (Second Edition) identifies a sampling method as the preferred means for all power consumption measurements and the fastest test method when the power is stable. For any non-cyclic power consumption, power readings are initially recorded over a period of at least 15 minutes after energizing the product. Data from the first third of the measurement period are discarded, and stability is evaluated by a linear regression through all power readings in the second two-thirds of the data. If the slope of the linear regression is less than 10 milliwatts per hour (mW/h) for input power less than or equal to 1.0 W, or less than 1 percent of the input power per hour for input power greater than 1.0 W, the power consumption is calculated as the average of the power readings during the second two-thirds of the measurement period. If the slope of the linear regression does not meet these stability criteria, the total period is continuously extended until the stability criteria are met for the second two-thirds of the data. In some cases, this is a more stringent requirement than the stability criteria of IEC Standard 62301 (First Edition). The lack of a definitive test period means that the test duration could extend past 15 minutes for certain products—up to 3 hours is allowed in the Second Edition—and could introduce added test burden as compared to the First Edition.

2. Unstable, Non-Cyclic Power Consumption

Section 5, paragraph 5.3 from IEC Standard 62301 (First Edition), which DOE incorporated by reference in the microwave oven test procedure in the March 2011 Interim Final Rule with clarification, specifies that either an average power method or accumulated energy approach could be used for

measuring non-cyclic unstable power consumption. As described previously, this methodology, as adopted in the March 2011 Interim Final Rule, would limit total test duration to 10 minutes.

In contrast, the Second Edition requires the use of either a sampling method or average reading method for measuring power consumption in standby mode or off mode. The sampling method is the same as described previously, but the measurement period must be at least 60 minutes, and the cumulative average of all data points recorded during the second two-thirds of the total period must fall within a band of ±0.2 percent.

The average reading method in section 5, paragraph 5.3.3 IEC Standard 62301 (Second Edition) comprises both an average power method and accumulated energy method, either of which may be selected for unstable, non-cyclic power. For both methods, a 30-minute stabilization period is specified, followed by two comparison measurement periods of not less than 10 minutes each. The average power values, either measured directly or calculated from accumulated energy during each period, are compared to determine whether they agree to within certain threshold criteria. If the threshold is not achieved, the comparison periods are each extended in approximately equal increments until the threshold is met. If agreement is not achieved after reaching 30 minutes for each comparison period, the sampling method must then be used. Therefore, the minimum test period is 50 minutes, but may extend up to 90 minutes, at which time an additional test may be required.

DOE believes that the stability criteria in either method improves the accuracy and representativeness of the measurement as compared to the First Edition, but would cause the required test time to increase (potentially quite significantly), with a corresponding increase in manufacturer burden due to the additional time and complexity of the test conduct.

3. Cyclic Power Consumption

The average power approach of section 5, paragraph 5.3.2(a) in IEC Standard 62301 (First Edition) requires a measurement period of not less than 5 minutes and that at least one or more complete cycles be measured. For microwave ovens in which standby mode power consumption varies as a function of displayed time, DOE adopted in the March 2011 Interim Final Rule a requirement to set the display time to 3:23 and allowing a 10-minute stabilization period prior to a 10-minute measurement period from the display time of 3:33 to 3:42, as described previously, based on the average power approach of section 5, paragraph 5.3.2(a) of IEC Standard 62301 (First Edition). This test method requires a minimum of 20 minutes to conduct.

Under section 5, paragraph 5.3.2 of the Second Edition, testers would be required to use the sampling method for microwave ovens that consume varying power as a function of the displayed time due to the cyclic nature of this power consumption. This method specifies a measurement period of at least four complete cycles (for a total of at least 40 minutes) divided into two comparison periods, with stability criteria evaluated by calculating the difference in average power measured in each comparison period divided by the time difference of the mid-point of each comparison period. Similar to the sampling method for stable power consumption measurements described previously, this ''slope'' must be less than 10 mW/h for input powers less than or equal to 1 W, and less than 1 percent of the input power per hour for input powers greater than 1 W. If the appropriate stability criterion is not met, additional cycles are added to each comparison period until the criterion is achieved. Once stability has been reached, the power consumption is calculated as the average of all readings from both comparison periods. Because all of the clock displays which DOE observed to be incorporated in microwave ovens are based on a 12-hour cycle, such a product which consumes varying power as a function of the displayed time would be required under the Second Edition to be tested for a minimum of 4 cycles, or 48 hours, in addition to an initial stabilization period of not less than 10 minutes. DOE notes that this test duration would impose a greatly increased test burden on manufacturers, particularly in comparison to the adopted 10-minute methodology.

4. Product Testing

In order to further evaluate the test methodology of IEC Standard 62301 (Second Edition), DOE conducted testing on a representative sample of 26 microwave ovens. DOE conducted tests according to the sampling method in section 5, paragraph 5.3.2 of IEC Standard 62301 (Second Edition), in some cases repeating the tests to evaluate reproducibility. The results from testing, presented in Table III.2, show that, for the test units that had stable, non-cyclic power consumption, the test duration ranged from 15 minutes to 25 minutes, with an average of approximately 17 minutes. The majority of test units required the minimum test duration of 15 minutes. For units that showed a stable, cycle power consumption, DOE used the methodology adopted in the March 2011 Interim Final Rule, setting the clock display to 3:23 and allowing a 10-minute stabilization period prior to a 10-minute measurement period for the display time of 3:33 to 3:42.

TABLE III. 2—DOE STANDBY MODE TEST DURATION USING IEC STANDARD 62301 (SECOND EDITION) SAMPLING METHOD

| Test unit | Product type | Display type | Power measurement method (Using sampling method) | Test 1 duration (min) | Test 2 duration (min) |
|---|---|---|---|---|---|
| 1 | Countertop Microwave-Only | LED | Stable, Cyclic | 20 | |
| 2 | Countertop Microwave-Only | LED | Stable, Cyclic | 20 | |
| 3 | Countertop Microwave-Only | VFD | Stable, Non-Cyclic | 15 | 15 |
| 4 | Countertop Microwave-Only | LED | Stable, Cyclic | 20 | 20 |
| 5 | Countertop Microwave-Only | LCD | Stable, Non-Cyclic | 15 | |
| 6 | Countertop Microwave-Only | LCD | Stable, Non-Cyclic | 15 | |
| 7 | Countertop Microwave-Only | LCD | Stable, Non-Cyclic | 15 | 15 |
| 8 | Countertop Microwave-Only | LCD | Stable, Non-Cyclic | 15 | |
| 9 | Countertop Microwave-Only | VFD | Stable, Non-Cyclic | 25 | 16 |
| 10 | Countertop Microwave-Only | VFD | Stable, Non-Cyclic | 15 | |
| 11 | Countertop Combination | VFD | Stable, Non-Cyclic | 18.75 | 15 |
| 12 | Countertop Combination | VFD | Stable, Non-Cyclic | 15 | 15 |

TABLE III. 2—DOE STANDBY MODE TEST DURATION USING IEC STANDARD 62301 (SECOND EDITION) SAMPLING METHOD—Continued

| Test unit | Product type | Display type | Power measurement method (Using sampling method) | Test 1 duration (min) | Test 2 duration (min) |
|---|---|---|---|---|---|
| 13 | Countertop Combination | VFD | Stable, Non-Cyclic | 15 | |
| 14 | Countertop Combination | VFD | Stable, Non-Cyclic | 15 | |
| 15 | Countertop Combination | LCD | Stable, Non-Cyclic | 23.75 | 22.5 |
| 16 | Countertop Combination | VFD | Stable, Non-Cyclic | 15 | 15 |
| 17 | Countertop Combination | LED | Stable, Cyclic | 20 | 20 |
| 18 | Countertop Combination | VFD | Stable, Non-Cyclic | 15 | |
| 19 | Over-the-Range Microwave Only | VFD | Stable, Non-Cyclic | 15 | 15 |
| 20 | Over-the-Range Microwave Only | VFD | Stable, Non-Cyclic | 23.125 | |
| 21 | Over-the-Range Microwave Only | VFD | Stable, Non-Cyclic | 15 | |
| 22 | Over-the-Range Microwave Only | VFD | Stable, Non-Cyclic | 15 | |
| 23 | Over-the-Range Microwave Only | LCD | Stable, Non-Cyclic | 15 | 15 |
| 24 | Over-the-Range Microwave Only | LED | Stable, Cyclic | 20 | |
| 25 | Over-the-Range Microwave Only | VFD | Stable, Non-Cyclic | 15 | |
| 26 | Over-the-Range Combination | VFD | Stable, Non-Cyclic | 15 | 15 |
| Average Test Duration | | | | 17.0 | |

5. Conclusions on Test Methodology

DOE, in evaluating IEC Standard 62301 (Second Edition) in comparison to the First Edition, confers substantial weight to the considerable body of comments on and input to the provisions and methodology that IEC developed as part of its latest revision process. DOE recognizes that, in some cases, test burden and complexity would be increased by requiring the use of the test methods specified in the Second Edition. However, DOE believes that in most cases, this added burden on manufacturers has been sufficiently considered by the IEC voting members as being outweighed by the improved accuracy and representativeness of the resulting power consumption measurement. Furthermore, manufacturers were aware of these differences, but nevertheless overwhelmingly supported DOE's use of the Second Edition. In addition, according to AHAM, harmonizing with international test standards will reduce testing burden on microwave oven manufacturers that sell products internationally by not requiring multiple standby tests to be conducted according to different testing methods in different countries. DOE tentatively concludes that the application of the provisions of the Second Edition to power measurements in off mode and most standby modes would be appropriate, and is proposing incorporation by reference of the relevant paragraphs of section 5.3 of IEC Standard 62301 (Second Edition) in the test procedures for these products in 10 CFR part 430, subpart B, appendix I, sections 3.1.3.1 and 3.2.3.

Further, DOE observes that although the Second Edition allows the choice of multiple test methods for both stable and unstable non-cyclic power consumption, the sampling method provides for a test duration that is approximately the same or similar to the allowable alternative methods and does not require classification of the nature of the power consumption (*e.g.,* stable or unstable, non-cyclic) in advance of the test. By monitoring the variation in power consumption during the test, the test operator could determine whether it is stable or unstable, and thereby establish the required duration of the sampling periods. For cyclic power consumption, the Second Edition also requires the use of the sampling method. Thus, DOE proposes to require in 10 CFR part 430, subpart B, appendix I, sections 3.1.3.1 and 3.2.3 the use of the sampling method in section 5.3.2 of the Second Edition for standby mode and off mode power measurements, except as follows. In the narrow case of microwave ovens with power consumption that varies as a function of the time displayed, DOE tentatively concludes that the application of the test methodology from the Second Edition would cause manufacturers to incur significant burden that would not be warranted by any potential improved accuracy of the test measurement. For this reason, DOE is not proposing in this supplemental notice to amend the substance of the 10-minute test method that is currently provided for these products in the microwave oven test procedure.

This supplemental notice is also proposing to amend the reference in 10 CFR 430.3 to add a reference to IEC Standard 62301 (Second Edition). DOE is not proposing to delete the reference to the First Edition in 10 CFR 430.3 because the proposed amendments in today's supplemental notice would continue to incorporate certain provisions from it as well as from the Second Edition.

DOE also notes that there are a number of editorial changes necessary in appendix I to allow for the correct referencing to the Second Edition. For example, the definition sections need to define the IEC Standard 62301 as the Second Edition instead of the First Edition. Also, there are some section numbering differences in the Second Edition which impact the text of the measurement provisions of the relevant test procedures.

*D. Definitions of ''Active Mode,'' ''Standby Mode,'' and ''Off Mode''*

In the March 2011 Interim Final Rule, DOE adopted a definition of ''standby mode'' based on the definitions provided in IEC Standard 62301 (FDIS), as follows:

- ''Standby mode'' is the condition in which an energy-using product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:
- A remote switch (including remote control), internal sensor, or timer to facilitate the activation of other modes (including activation or deactivation of active mode);
- And continuous functions, including information or status displays (including clocks) or sensor-based functions. 76 FR 12825, 12834 (Mar. 9, 2011).

DOE also adopted in its amendments to the test procedure the clarification, provided as a note accompanying the definition of standby mode in IEC Standard 62301 (FDIS), that a timer is a

continuous clock function (which may or may not be associated with a display) that provides regularly scheduled tasks (*e.g.* switching) and that operates on a continuous basis. *Id.*

DOE also adopted definitions of ''off mode'' and ''active mode'' based on the definitions provided in IEC Standard 62301 (FDIS), as follows:

• ''Off mode'' is the condition in which an energy-using product is connected to a mains power source and is not providing any standby mode or active mode function and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of off mode. *Id.*

• ''Active mode(s)'' is the condition in which an energy-using product is connected to a mains power source and at least one primary function is activated. *Id.*

AHAM commented that it supported DOE's proposal to adopt definitions of standby mode, off mode, and active mode based on the definitions provided in IEC Standard 62301 (FDIS), except that because the definitions in the FDIS version are identical to those in the published version of IEC Standard 62301 (Second Edition), DOE should cite the Second Edition rather than the FDIS version. (AHAM, No. 31 at p. 4) DOE notes that it did not incorporate by reference the definitions of standby mode, off mode, and active mode from IEC Standard 62301 (FDIS) in the March 2011 Interim Final Rule, but instead adopted definitions based on those definitions. 76 FR 12825, 12836 (Mar. 9, 2011). DOE agrees that the definitions in IEC Standard 62301 (FDIS) are identical to the definitions in IEC Standard 62301 (Second Edition). As a result, DOE does not believe it is necessary to propose amendments to the definitions of standby mode, off mode, and active mode in 10 CFR part 430, subpart B, appendix I, section 1, that were adopted in the March 2011 Interim Final Rule based on these comments because these definitions have the same functional equivalence to those in both IEC Standard 62301 (FDIS) and IEC Standard 62301 (Second Edition). However, DOE proposes in today's SNOPR to make non-substantive editorial changes to clarify for the reader the description of the user-oriented or protective functions associated with standby mode operation in the definition of standby mode in 10 CFR part 430, subpart B, appendix I, section 1.13.

DOE noted in the March 2011 Interim Final Rule that the definition of standby mode states that it includes user-oriented or protective functions to facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer. DOE stated that if the product is consuming energy to power an infrared sensor used to receive signals from a remote control (while not operating in the active mode), such a function would be considered part of standby mode, regardless of whether the remote is classified as ''one-way'' or ''two-way,'' because of the function to facilitate the deactivation of another mode by remote switch (including remote control), internal sensor, or timer. However, if a ''one-way'' remote control powers the product down, including turning off any infrared sensors to receive signals from a remote control, then the product would be operating in the off mode when it is powered down, given that no other standby mode functions within the product are energized. 76 FR 12825, 12836 (Mar. 9, 2011).

AHAM commented that it does not support including one-way remote controls as a feature under the definition of standby mode. AHAM stated that although EPCA defines standby mode to include activation by remote control, one-way remotes do not meet the intent of the statute. AHAM stated that a standard remote, when it powers a product ''off'' actually powers the product down, not off, such that it can be turned on again via remote control, and this appropriately falls under standby power. Conversely, AHAM stated that a one-way remote turns the product completely off, including turning off any infrared sensors to receive signals from a remote control, such that it cannot be turned on again through use of the remote. Thus, a one-way remote, unlike a standard remote, does not put the product into a standby mode, but instead puts the product into an off mode when it is powered down, as long as no other standby mode functions within the product are energized. AHAM stated that currently there are few, if any, one-way remotes in the United States, and that including one-way remotes in the off mode instead of in the standby mode will encourage manufacturers to design products with one-way remotes, which could result in decreased energy use. AHAM commented that DOE should include such a clarification in the definition of standby mode. (AHAM, No. 31 at p. 4)

DOE notes that if a one-way remote control powers the product down, including turning off any infrared sensors to receive signals from a remote control, then such a remote control sensor would not be facilitating the activation of other modes (including activation or deactivation of active mode), as defined under standby mode. DOE believes that the definition of standby mode clearly excludes the condition in which a one-way remote control has powered down the product, including turning off any infrared sensors to receive signals from a remote control, as long as the microwave oven does not have any other standby mode product functions energized. Under those conditions, the microwave oven would not be consuming any energy related to standby mode, and would be considered to be in off mode. As a result, DOE is not proposing amendments to the definition of standby mode in 10 CFR part 430, subpart B, appendix I, section 1 to provide such a clarification in today's SNOPR.

*E. Specifications for the Test Methods and Measurements for Microwave Oven Standby Mode and Off Mode Testing*

As discussed above in section III.C, for microwave ovens in which standby mode power consumption varies as a function of displayed time, DOE adopted in the March 2011 Interim Final Rule a requirement to set the display time to 3:23 and allowing a 10-minute stabilization period prior to a 10-minute measurement period from the display time of 3:33 to 3:42 based on the average power approach of section 5, paragraph 5.3.2(a) of IEC Standard 62301 (First Edition). 76 FR 12825, 12838–40 (Mar. 9, 2011). The 10-minute stabilization period was determined based on DOE's testing, which showed that all microwave ovens in its test sample dropped to the lower power state in less than 10 minutes, DOE stated that a requirement to set the display time to 3:23 and allowing a 10-minute stabilization period prior to a 10-minute measurement period would best balance the need for reproducibility of the test procedure with the burden placed on manufacturers. *Id.* at 12839.

AHAM noted that it commented in response to the July 2010 TP SNOPR that the test procedure should require that the clock be set to 3:33 minus the number of minutes needed to return to the lowest power consumption mode, and that DOE responded in the March 2011 Interim Final Rule by stating that AHAM's proposal was not sufficiently accurate or repeatable. AHAM commented that it disagrees with DOE's response. AHAM stated its proposed method provides for a more accurate measurement because the length of time to return to the lowest power consumption mode after setting the

clock will vary for each microwave oven due to differences in product design. AHAM stated that it is possible that some products would not reach stabilization in that 10-minute period, and thus the 10-minute method would no longer be an accurate measurement for such products. AHAM added that each manufacturer will be able to determine the amount of time to subtract with minimal additional test burden (as, according to AHAM, all models within a basic model will take the same amount of time to return to the lowest power consumption mode), and, therefore, no stabilization time needs to be specified. (AHAM, No. 31 at p. 5)

AHAM proposed that, as a way of preventing anti-circumvention, DOE should require manufacturers to certify the number of minutes that the unit waits before returning to the lowest power consumption mode. AHAM added that if DOE does require this information, it should be treated as confidential business information. (AHAM, No. 31 at p. 5) Whirlpool supported the comments made by AHAM. (Whirlpool, No. 30 at p. 1)

DOE recognizes the merits of the method suggested by AHAM by allowing flexibility for a manufacturer to shorten or lengthen the test cycle depending on the design of their microwave oven. However, as noted in the March 2011 Interim Final Rule, DOE's testing showed that all microwave ovens in its test sample dropped to the lower-power state in less than 10 minutes. 76 FR 12825, 12839 (Mar. 9, 2011). DOE is unaware of any technical basis for a stabilization period longer than 10 minutes, and DOE believes that including a defined stabilization period will encourage manufacturers to minimize the duration of the stabilization period in their products. DOE also believes that it is important for the test procedure to be repeatable and reproducible, and to minimize burden. DOE notes that independent testing laboratories may not sufficiently understand the control logic to determine the appropriate number of minutes needed to return to the lowest power consumption mode. DOE also notes that a display may dim after a certain period of time, but a manufacturer may design a microwave oven with other features or functions that transition to a lower power consumption mode after a different amount of time that is not easily discernible. As a result, different testing laboratories may use different testing times using such a method. DOE believes that defining a specific stabilization period will increase the reproducibility of testing among laboratories. For these reasons, DOE is not proposing amendments in 10 CFR part 430, subpart B, appendix I, section 3.1.3.1 to set the time to 3:33 minus the number of minutes needed to return to the lowest power consumption mode for microwave ovens in which standby mode power consumption varies as a function of displayed time.

*F. Compliance With Other EPCA Requirements*

1. Test Burden

EPCA requires that test procedures shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In the March 2011 Interim Final Rule, DOE stated that the amendments it adopted in the microwave oven test procedure incorporate a test standard that is accepted internationally for measuring power consumption in standby mode and off mode (IEC Standard 62301). Based on DOE testing and analysis of IEC Standard 62301 (First Edition), DOE determined that the amendments to the microwave oven test procedure produce standby mode and off mode average power consumption measurements that represent an average use cycle both for cases in which the measured power is stable, as well as for when the measured power is unstable (*i.e.,* varies over a cycle). DOE also stated that because the test methods and equipment that the amendments would require for measuring standby power in microwave ovens do not differ substantially from the test methods and equipment required under the previous test procedure, manufacturers would not be required to make a major investment in test facilities and new equipment and would not be unduly burdensome to conduct. DOE also noted that the number of units to be tested, according to the sampling requirements in 10 CFR 430.24(i), is reasonable and, in part due to a shorter test duration than previously proposed in the October 2008 TP NOPR, would not substantially add to manufacturer test burden and would allow manufacturers that conduct quality assurance testing on the production line to continue to do so. For these reasons, DOE concluded in the March 2011 Interim Final Rule that the amended test procedure would produce test results that measure the power consumption of a covered product during a representative average use cycle as well as annual energy consumption, and that the test procedure would not be unduly burdensome to conduct. 76 FR 12825, 12840 (Mar. 9, 2011).

Today's supplemental proposed amendments to the DOE test procedures are based on an updated version of IEC Standard 62301, IEC Standard 62301 (Second Edition), which has been the subject of significant review and input from interested parties and, thus, continues to be an internationally accepted test standard for measuring standby mode and off mode power consumption. As discussed in section III.C of this notice, DOE believes that the provisions of IEC Standard 62301 (Second Edition) that it proposes to incorporate by reference through today's SNOPR provide a means to measure power consumption with greater accuracy and repeatability than the provisions from IEC Standard 62301 (First Edition) that were adopted in the March 2011 Interim Final Rule. DOE tentatively concludes that today's proposed amendments would also provide measurements representative of average consumer use of the product under test, even if the test conditions and procedures may not be identical to average consumer use (for example, specified display times). In particular, DOE determined that the abbreviated 10-minute test period for those microwave ovens with power consumption varying according to the time displayed on the clock, as discussed in section III.C, has been carefully designed and circumscribed in order to attain an overall calculated measurement of the energy consumption during a representative 12-hour use cycle. 76 FR 12825, 12838–40 (Mar. 9, 2011). DOE further believes that the new provisions in the applicable sections of IEC Standard 62301 (Second Edition) improve test results without undue testing burden. DOE acknowledges that certain methods from IEC Standard 62301 (Second Edition) may increase test duration somewhat, but where such an increase was deemed excessive (*i.e.,* for products with clocks that can vary in power consumption as a function of time displayed), DOE retained the method previously adopted in order to mitigate test burden. DOE also believes that the potential for increased test burden in other power consumption measurements is offset by more reasonable requirements for testing equipment, while maintaining measurement accuracy deemed acceptable and practical by voting members for IEC Standard 62301 (Second Edition). DOE also notes that,

according to AHAM, harmonizing with international test standards will reduce testing burden on microwave oven manufacturers that sell products internationally by not requiring multiple standby tests to be conducted according to different testing methods in different countries. Thus, DOE tentatively concludes that the amended test procedures newly proposed in today's SNOPR would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures would not be unduly burdensome to conduct.

2. Certification Requirements

Sections 6299–6305 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards established for certain consumer products. (42 U.S.C. 6299–6305 (consumer products) On March 7, 2011, the Department revised, consolidated, and streamlined its existing certification, compliance, and enforcement regulations for certain consumer products and commercial and industrial equipment covered under EPCA, including microwave ovens. 76 FR 12422. These regulations are codified in 10 CFR 429.23 (conventional cooking tops, conventional ovens, microwave ovens).

The certification requirements for microwave ovens consist of a sampling plan for selection of units for testing and requirements for certification reports. Because there are no existing energy conservation standards for microwave ovens, DOE is not proposing any amendments to the certification reporting requirements for these products. However, because DOE proposes in today's SNOPR to introduce new metrics (standby mode power consumption ($P_{SB}$) and off mode power consumption ($P_{OFF}$)) for microwave ovens, DOE additionally proposes amended provisions in the sampling plan in 10 CFR 429.23(a)(2)(i) that would include $P_{SB}$ and $P_{OFF}$.

## IV. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the March 2011 Interim Final Rule remain unchanged for this SNOPR. These determinations are set forth in the March 2011 Interim Final Rule. 76 FR 12825, 12840–42 (Mar. 9, 2011).

## V. Public Participation

### *A. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the DATES section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov web page will require you to provide your name and contact information. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery, or mail.* Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when

such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

*B. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. *Incorporation of IEC Standard 62301 (Second Edition).* DOE invites comment on the adequacy of IEC Standard 62301 (Second Edition) to measure standby mode and off mode power consumption for microwave ovens, and the suitability of incorporating into DOE regulations the following specific provisions from IEC Standard 62301 (Second Edition): Section 4 (''General conditions for measurements''), paragraph 4.2, ''Test room,'' paragraph 4.3.2, ''Supply voltage waveform,'' and paragraph 4.4, ''Power measuring instruments,'' and section 5 (''Measurements''), paragraph 5.1, ''General,'' paragraph 5.2 ''Preparation of product'', and paragraph 5.3.2, ''Sampling method.'' (*See* section III.C)

2. *Measurement of Total Harmonic Distortion.* DOE invites comment on the acceptability of measuring the total harmonic content, crest factor, and maximum current ratio before and after the actual test measurement if the power measuring instrument is unable to perform these measurements during the actual test measurement. (*See* section III.C)

3. *Methods Based on IEC Standard 62301 (First Edition) for Microwave Ovens with Clocks.* DOE welcomes comment on its determination that the provisions of IEC Standard 62301 (Second Edition) would cause manufacturers to incur significant test burden for microwave ovens with power consumption that varies as a function of the time displayed, and the continued proposal of a 10-minute test method of measuring standby mode power for these products in the microwave oven test procedure. (*See* section III.C)

4. *Test Burden.* DOE seeks comment on its analysis of the test burden associated with standby mode and off mode testing as proposed in today's SNOPR. (*See* sections III.C and III.F.1)

## VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rule.

## List of Subjects

*10 CFR Part 429*

Energy conservation, Household appliances, Reporting and recordkeeping requirements.

*10 CFR Part 430*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental Relations, Small businesses.

Issued in Washington, DC, on November 17, 2011.

**Kathleen B. Hogan,**

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

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 430 of title 10 of the Code of Federal Regulations, as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

2. Section 429.23 is amended by revising paragraph (a)(2)(i) introductory text to read as follows:

### § 429.23 Conventional cooking tops, conventional ovens, microwave ovens.

(a) * * *

(2) * * *

(i) Any represented value of estimated annual operating cost, energy consumption, standby mode power consumption, off mode power consumption, or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

* * * * *

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

3. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

4. Section 430.2 is amended by adding the definition for ''Combination oven'' in alphabetical order to read as follows:

### § 430.2 Definitions.

* * * * *

*Combination oven* means a microwave oven that incorporates convection features and possibly other means of cooking.

* * * * *

5. Section 430.3 is amended by adding paragraph (l)(2) to read as follows:

### § 430.3 Materials incorporated by reference.

* * * * *

(l) * * *

(2) IEC Standard 62301 (''IEC 62301''), *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01), IBR approved for Appendix I.

* * * * *

6. Appendix I to Subpart B of Part 430 is amended:

a. By revising the note after the heading;

b. By revising section 1. *Definitions;*

c. In section 2. *Test Conditions,* by revising sections 2.1.3, 2.2.1.2, 2.5.2, 2.6, and 2.9.1.3; and

d. In section 3. *Test Methods and Measurements,* by revising sections 3.1.1, 3.1.1.1, 3.1.2, 3.1.3, and 3.2.3.

The revisions read as follows:

## Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

**Note:** The procedures and calculations in this Appendix need not be performed to determine compliance with energy conservation standards for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens at this time. However, any representation related to standby mode and off mode energy consumption of these products made after [*date 180 days after date of publication of the test procedure final rule in the* ***Federal Register***] must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, however, when DOE adopts an energy conservation standard that incorporates standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required. Future revisions may add relevant provisions for measuring active mode in microwave ovens.

**1. Definitions**

1.1 *Active mode* means a mode in which a conventional cooking top, conventional oven, conventional range, or microwave oven is connected to a mains power source, has been activated, and is performing the main function of producing heat by means of a gas flame, electric resistance heating, or microwave energy. Delay start mode is a one off user-initiated short duration function that is associated with an active mode.

1.2 *Built-in* means the product is supported by surrounding cabinetry, walls, or other similar structures.

1.3 *Drop-in* means the product is supported by horizontal surface cabinetry.

1.4 *Forced convection* means a mode of conventional oven operation in which a fan is used to circulate the heated air within the oven compartment during cooking.

1.5 *Freestanding* means the product is not supported by surrounding cabinetry, walls, or other similar structures.

1.6 *IEC 62301 First Edition* refers to the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (first edition June 2005) (incorporated by reference, see § 430.3).

1.7 *IEC 62301 Second Edition* refers to the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 Edition 2.0 2011–01 (incorporated by reference, see § 430.3).

1.8 *Normal nonoperating temperature* means the temperature of all areas of an appliance to be tested are within 5 °F (2.8 °C) of the temperature that the identical areas of the same basic model of the appliance would attain if it remained in the test room for 24 hours while not operating with all oven doors closed and with any gas pilot lights on and adjusted in accordance with manufacturer's instructions.

1.9 *Off mode* means a mode in which a conventional cooking top, conventional oven, conventional range, or microwave oven is connected to a mains power source and is not providing any active mode or standby mode function and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.10 *Primary energy consumption* means either the electrical energy consumption of a conventional electric oven or the gas energy consumption of a conventional gas oven.

1.11 *Secondary energy consumption* means any electrical energy consumption, other than clock energy consumption, of a conventional gas oven.

1.12 *Standard cubic foot (or liter (L)) of gas* means that quantity of gas that occupies 1 cubic foot (or alternatively expressed in L) when saturated with water vapor at a temperature of 60 °F (15.6 °C) and a pressure of 30 inches of mercury (101.6 kPa) (density of mercury equals 13.595 grams per cubic centimeter).

1.13 *Standby mode* means any mode in which a conventional cooking top, conventional oven, conventional range, or microwave oven is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) Facilitation of the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) provision of continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that allows for regularly scheduled tasks and that operates on a continuous basis.

1.14 *Thermocouple* means a device consisting of two dissimilar metals which are joined together and, with their associated wires, are used to measure temperature by means of electromotive force.

1.15 *Symbol usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

A—Number of Hours in a Year
B—Number of Hours Pilot Light Contributes to Cooking
C—Specific Heat
E—Energy Consumed
Eff—Cooking Efficiency
H—Heating Value of Gas
K—Conversion for Watt-hours to Kilowatt-hours
$K_e$—3.412 Btu/Wh, Conversion for Watt-hours to Btu's
M—Mass
n—Number of Units
O—Annual Useful Cooking Energy Output
P—Power
Q—Gas Flow Rate
R—Energy Factor, Ratio of Useful Cooking Energy Output to Total Energy Input
S—Number of Self-Cleaning Operations per Year
T—Temperature
t—Time
V—Volume of Gas Consumed
W—Weight of Test Block

**2. Test Conditions**

* * * * *

2.1.3 *Microwave ovens.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1. The microwave oven shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes. A watt meter shall be installed in the circuit and shall be as described in section 2.9.1.3.

* * * * *

2.2.1 *Electrical supply.*

2.2.1.1 *Voltage.* Maintain the electrical supply to the conventional range, conventional cooking top, and conventional oven being tested at 240/120 volts except that basic models rated only at 208/120 volts shall be tested at that rating. Maintain the voltage within 2 percent of the above specified voltages. For microwave oven testing, maintain the electrical supply to the microwave oven at 240/120 volts and 60 hertz. For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain the electrical supply frequency at 60 hertz ± 1 percent. Maintain the electrical supply for microwave oven testing within 1 percent of the specified voltage and frequency.

2.2.1.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform as indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). If the power measuring instrument used for testing is unable to measure and record the total harmonic content during the test measurement period, it is acceptable to measure and record the total harmonic content immediately before and after the test measurement period.

* * * * *

2.5 *Ambient room air temperature.*

2.5.1 *Active mode ambient room air temperature.* During the active mode test, maintain an ambient room air temperature, $T_R$, of 77° ± 9 °F (25° ± 5 °C) for conventional ovens and cooking tops, as measured at least 5 feet (1.5 m) and not more than 8 feet (2.4 m) from the nearest surface of the unit under test and approximately 3 feet (0.9 m) above the floor. The temperature shall be measured with a thermometer or temperature indicating system with an accuracy as specified in section 2.9.3.1.

2.5.2 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3).

2.6 *Normal nonoperating temperature.* All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in section 1.8, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4, as applicable.

* * * * *

2.9.1.3 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode shall meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). If the power measuring instrument used for testing is unable to measure and record the crest factor, power factor, or maximum current ratio during the test measurement period, it is acceptable to measure the crest factor, power factor, and maximum current ratio immediately before and after the test measurement period.

* * * * *

**3. Test Methods and Measurements**

3.1 *Test methods.*

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in section 2, ''TEST CONDITIONS,'' of this Appendix, and adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top,

if so equipped. Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in section 1.8 and described in section 2.6. Set the conventional oven test block $W_1$ approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for at least one complete thermostat ''cut-off/cut-on'' of the electrical resistance heaters or gas burners after the test block temperature has increased 234 °F (130 °C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in section 2, ''TEST CONDITIONS,'' of this Appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in section 1.8 and described in section 2.6. Then set the conventional oven's self-cleaning process in accordance with the manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

* * * * *

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in section 2, ''TEST CONDITIONS,'' of this Appendix. Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer's instructions and turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in section 1.8 and described in section 2.6. Set the test block in the center of the surface unit under test. The small test block, $W_2$, shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, $W_3$, shall be used on electric surface units over 7 inches (177.8 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25 ± 5 percent of the maximum energy input rate. After 15 ± 0.1 minutes at the reduced energy setting, turn off the surface unit under test.

* * * * *

3.1.3 *Microwave oven.*

3.1.3.1 *Microwave oven test standby mode and off mode power.* Establish the testing conditions set forth in section 2, ''TEST CONDITIONS,'' of this Appendix. For microwave ovens that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the microwave oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition). For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33. If a microwave oven is capable of operation in either standby mode or off mode, as defined in sections 1.13 and 1.9, respectively, or both, test the microwave oven in each mode in which it can operate.

* * * * *

3.2.3 *Microwave oven test standby mode and off mode power.* Make measurements as specified in Section 5, Paragraph 5.3 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). If the microwave oven is capable of operating in standby mode, measure the average standby mode power of the microwave oven, $P_{SB}$, in watts as specified in section 3.1.3.1. If the microwave oven is capable of operating in off mode, measure the average off mode power of the microwave oven, $P_{OFF}$, as specified in section 3.1.3.1.

* * * * *

3.3.13 Record the average standby mode power, $P_{SB}$, for the microwave oven standby mode, as determined in section 3.2.3 for a microwave oven capable of operating in standby mode. Record the average off mode power, $P_{OFF}$, for the microwave oven off mode power test, as determined in section 3.2.3 for a microwave oven capable of operating in off mode.

* * * * *

[FR Doc. 2011–30234 Filed 11–22–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–1176; Directorate Identifier 2011–NE–35–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Pratt & Whitney JT9D–7R4D, –7R4D1, –7R4E, –7R4E1, –7R4G2, –7R4H1, and –7R4E4 turbofan engines. This proposed AD would establish a new lower life limit for high-pressure turbine (HPT) 1st stage air seals, part number (P/N) 735907, and would require removing them from service using a drawdown schedule. This proposed AD was prompted by the determination that a new lower life limit for the HPT 1st stage air seals, P/N 735907, is necessary. We are proposing this AD to prevent critical life-limited rotating engine part failure and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by January 23, 2012.

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Stephen Sheely, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7750; *fax:* (781) 238–7199; *email: stephen.k.sheely@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1176; Directorate Identifier 2011–NE–35–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://*

*www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We received two reports of HPT 1st stage air seals, P/N 735907, found cracked by fluorescent penetrant inspection during engine overhaul. The cracks were located on the flat section of the seal, between the bolted flange and the knife edge seals. One of the air seals had accumulated 11,150 cycles-since-new (CSN), and the other air seal had accumulated 13,340 CSN. The current published life limit for these seals is 15,000 CSN. Pratt & Whitney has informed us that they are preparing to issue service information which will require reducing the published life limit from 15,000 CSN to 9,000 CSN. This condition, if not corrected, could result in critical life-limited rotating engine part failure and damage to the airplane.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would require establishing a new lower life limit for HPT 1st stage air seals, P/N 735907, from 15,000 CSN, to 9,000 CSN, and would require removing them from service using a drawdown schedule.

**Costs of Compliance**

We estimate that this proposed AD would affect 257 Pratt & Whitney JT9D–7R4D, –7R4D1, –7R4E, –7R4E1, –7R4G2, –7R4H1, and –7R4E4 turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 28.8 work-hours per engine to perform the actions required by this AD, and that the average labor rate is $85 per work-hour. Required parts will cost about $37,200 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $10,189,536.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Pratt & Whitney:** Docket No. FAA–2011–1176; Directorate Identifier 2011–NE–35–AD.

**(a) Comments Due Date**

We must receive comments by January 23, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Pratt & Whitney JT9D–7R4D, –7R4D1, –7R4E, –7R4E1, –7R4G2, –7R4H1, and –7R4E4 turbofan engines.

**(d) Unsafe Condition**

This AD was prompted by the determination that a new lower life limit of 9,000 cycles-since-new (CSN) for high-pressure turbine (HPT) 1st stage air seals, part number (P/N) 735907, is necessary. We are issuing this AD to prevent critical life-limited rotating engine part failure, and damage to the airplane.

**(e) Compliance**

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

**(f) Removal of HPT 1st Stage Air Seals, P/N 735907**

Remove HPT 1st stage air seals, P/N 735907, from service as follows:

(1) For air seals that have fewer than 6,500 CSN on the effective date of this AD, remove from service before exceeding 9,000 CSN.

(2) For air seals that have 6,500 CSN or more on the effective date of this AD, do the following:

(i) If the engine has a shop visit before the air seal exceeds 9,000 CSN, remove the air seal from service before exceeding 9,000 CSN.

(ii) If the engine does not have a shop visit before the air seal exceeds 9,000 CSN, remove the air seal from service at the next shop visit, not to exceed 2,500 cycles from the effective date of this AD or 15,000 CSN, whichever occurs first.

(3) Remove from service any HPT 1st stage air seal, P/N 735907, that is installed or re-installed after the effective date of this AD, before the air seal exceeds the new life limit of 9,000 CSN.

**(g) Installation Prohibition**

After the effective date of this AD, do not install or reinstall into any engine any HPT 1st stage air seal, P/N 735907, that exceeds the new life limit of 9,000 CSN.

**(h) Engine Shop Visit Definition**

For the purposes of this AD, an engine shop visit is the induction of an engine into the shop after the effective date of this AD, where the separation of a major engine flange occurs, except that the following maintenance actions, or any combination, are not considered engine shop visits:

(1) Introduction of an engine into a shop solely for removal of the compressor top or bottom case for airfoil maintenance or variable stator vane bushing replacement.

(2) Introduction of an engine into a shop solely for removal or replacement of the stage 1 fan disk.

(3) Introduction of an engine into a shop solely for replacement of the turbine rear frame.

(4) Introduction of an engine into a shop solely for replacement of the accessory gearbox or transfer gearbox, or both.

(5) Introduction of an engine into a shop solely for replacement of the fan forward case.

**(i) Alternative Methods of Compliance (AMOCs)**

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

**(j) Related Information**

For more information about this AD, contact Stephen Sheely, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7750; fax: (781) 238–7199; *email: stephen.k.sheely@faa.gov.*

Issued in Burlington, Massachusetts, on November 15, 2011.

**Peter A. White,**

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

[FR Doc. 2011–30137 Filed 11–22–11; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–1253; Directorate Identifier 2011–NM–079–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 airplanes that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Several cases of corrosion of the Main Landing Gear (MLG) support Rib 5 fitting lug bores have been reported on A320 family aeroplanes. * * * If not detected, the cracking may lead to the complete failure of the fitting and thus could affect the structural integrity of the MLG installation.

EASA AD 2007–0213 was issued to address this condition * * *.

After that AD was issued, a case of Rib 5, ruptured at the 4 o'clock position, was discovered on an aeroplane on which the terminating action of EASA AD 2007–0213 had already been embodied * * *.

Investigation of that case revealed that corrosion damage and cracking that should have been removed by repair machining was below the level of detectability of the Non Destructive Test (NDT) technique that cleared the surfaces prior to bush installation.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by January 9, 2012.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 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 review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; *phone:* (425) 227–1405; *fax:* (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1253; Directorate Identifier 2011–NM–079–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

On March 31, 2008, we issued AD 2008–08–04, Amendment 39–15456 (73 FR 19975, April 14, 2008). That AD required actions intended to address an unsafe condition on Airbus Model A318, A319, A320, and A321 airplanes.

Since we issued AD 2008–08–04, Amendment 39–15456 (73 FR 19975, April 14, 2008), we have been advised that the existing AD is inadequate to address the unsafe condition. We have determined that certain airplanes need additional detailed inspections for cracks of the MLG support 5 fitting, and repair of any cracks found. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0011, dated January 21, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Several cases of corrosion of the Main Landing Gear (MLG) support Rib 5 fitting lug bores have been reported on A320 family aeroplanes. In some instances, corrosion pits caused the cracking of the forward lug (sometimes through its complete thickness). If not detected, the cracking may lead to the complete failure of the fitting and thus could affect the structural integrity of the MLG installation.

EASA AD 2007–0213 [dated August 7, 2007, which corresponds to FAA AD 2008–08–04, Amendment 39–15456 (73 FR 19975, April 14, 2008)] was issued to address this condition and required a repetitive inspection program of the MLG support Rib 5 fitting forward lugs and, as terminating

action, the embodiment of Airbus Service Bulletin (SB) A320–57–1118.

After that [EASA] AD was issued, a case of Rib 5, ruptured at the 4 o'clock position, was discovered on an aeroplane on which the terminating action of EASA AD 2007–0213 had already been embodied in accordance with Airbus SB A320–57–1118.

Investigation of that case revealed that corrosion damage and cracking that should have been removed by repair machining was below the level of detectability of the Non Destructive Test (NDT) technique that cleared the surfaces prior to bush installation.

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

It has also been established that all A318 aeroplanes have had Airbus modification 32025 embodied in production on both LH and RH wings, which is a one-way interchangeable (non-reversible) modification. Consequently, the unsafe condition addressed by AD 2007–0231 cannot occur or develop on those aeroplanes.

For the reasons described above, this AD, which supersedes EASA AD 2007–0213:

—Retains the requirements of EASA AD 2007–0213 for aeroplanes on which the MLG Rib Bushes have not been modified/repaired in accordance with the instructions of Airbus SB A320–57–1118, or Airbus SRM 57–26–13, or the identified Airbus Repair Instructions, as applicable, and

—Requires, for all aeroplanes on which Airbus SB A320–57–1118 has been embodied in service, or on which Airbus SRM 57–26–13 or the identified Airbus Repair Instructions have been applied, a repetitive inspection program [for cracks] of the MLG support Rib 5 fitting forward lugs and, depending on findings, the accomplishment of the associated corrective actions [*i.e.,* repair], and

—Reduces the Applicability by deleting A318 aeroplanes.

You may obtain further information by examining the MCAI in the AD docket.

## Relevant Service Information

Airbus has issued Mandatory Service Bulletins A320–57–1118, Revision 04, dated June 4, 2008; and A320–57A1166, dated January 12, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

## FAA's Determination and Requirements of This Proposed AD

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

## Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 740 products of U.S. registry.

The actions that are required by AD 2008–08–04, Amendment 39–15456 (73 FR 19975, April 14, 2008), and retained in this proposed AD take about 73 work-hours per product, at an average labor rate of $85 per work hour. Required parts would cost about $3,860 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, the estimated cost of the currently required actions is $10,065 per product.

We estimate that it would take about 3 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the new actions in this proposed AD on U.S. operators to be up to $188,700, 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 proposed 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify this proposed regulation:*

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15456 (73 FR 19975, April 14, 2008) and adding the following new AD:

**Airbus:** Docket No. FAA–2011–1253; Directorate Identifier 2011–NM–079–AD.

**Comments Due Date**

(a) We must receive comments by January 9, 2012.

**Affected ADs**

(b) This AD supersedes AD 2008–08–04, Amendment 39–15456 (73 FR 19975, April 14, 2008).

**Applicability**

(c) This AD applies to Airbus Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–111, A320 –211, A320 –212, A320–214, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes; certificated in any category, except airplanes on which Airbus modification 32025 has been accomplished in production.

**Subject**

(d) Air Transport Association (ATA) of America Code 57: Wings.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

Several cases of corrosion of the Main Landing Gear (MLG) support Rib 5 fitting lug bores have been reported on A320 family aeroplanes. * * * If not detected, the cracking may lead to the complete failure of the fitting and thus could affect the structural integrity of the MLG installation.

EASA AD 2007–0213 was issued to address this condition * * *.

After that [EASA] AD was issued, a case of Rib 5, ruptured at the 4 o'clock position, was discovered on an aeroplane on which the terminating action of EASA AD 2007–0213 had already been embodied * * *.

Investigation of that case revealed that corrosion damage and cracking that should have been removed by repair machining was below the level of detectability of the Non Destructive Test (NDT) technique that cleared the surfaces prior to bush installation.

* * * * *

**Compliance**

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Restatement of Certain Requirements of AD 2006–11–04, Amendment 39–14608 (71 FR 29578, May 23, 2006), With Changes to NDT References**

**Repetitive Detailed Inspections**

(g) Within 8 days after June 7, 2006 (the effective date of AD 2006–11–04, Amendment 39–14608 (71 FR 29578, May 23, 2006)), or before further flight after a hard landing, whichever is first: Perform a detailed inspection for cracking in the forward lug of the support rib 5 fitting of the left- and right-hand MLG, and, if any crack is found, replace the MLG fitting with a new fitting before further flight, in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent); or in accordance with the actions specified in the Airbus A318/A319/A320/A321 Nondestructive Testing Manual, Chapter 51–90–00, Revision dated February 1, 2003. Repeat the inspection thereafter at intervals not to exceed 8 days, or before further flight after a hard landing, whichever is first. As of May 19, 2008 (the effective date of AD 2008–08–04, Amendment 39–15456 (73 FR 19975, April 14, 2008)), the repetitive inspections required by paragraph (k) of this AD must be accomplished in lieu of the repetitive inspections required by this paragraph.

**Note 1:** For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, *etc.,* may be necessary. Surface cleaning and elaborate procedures may be required.''

**Optional Inspection Method**

(h) Performing an ultrasonic inspection for cracking in the forward lug of the support rib 5 fitting of the left- and right-hand MLG in accordance with a method approved by the Manager, International Branch, ANM–116, or the EASA (or its delegated agent; or in accordance with the Airbus A318/A319/A320/A321 Nondestructive Testing Manual, Chapter 57–29–03, Revision dated February 1, 2005 (for Model A318, A319, and A320 airplanes), or Chapter 57–29–04, Revision dated May 1, 2005 (for Model A321 airplanes); or in accordance with Task 57–29–03–270–801–A–01, Inspection of the Gear Rib Forward and Aft Lug Attachment for the Main Gear, of Chapter 57, Wings, of the Airbus A318/A319/A320/A321 Nondestructive Testing Manual, Revision 89, dated August 1, 2011; as applicable; is an acceptable alternative method of compliance for the initial and repetitive inspections required by paragraph (g) of this AD. As of the effective date of this AD, only Task 57–29–03–270–801–A–01, Inspection of the Gear Rib Forward and Aft Lug Attachment for the Main Gear, of Chapter 57, Wings, of the Airbus A318/A319/A320/A321 Nondestructive Testing Manual, Revision 89, dated August 1, 2011, may be used.

**Optional Terminating Action**

(i) Repair of the forward lugs of the support rib 5 fitting of the left- and right-hand MLG, done before the effective date of this AD in accordance with a method approved by the Manager, International Branch, ANM–116; or the EASA (or its delegated agent); or in accordance with Airbus A319 Structural Repair Manual (SRM), Paragraph 5.C., 57–26–13, Revision November 1, 2004; Airbus A320 SRM, Paragraph 5.D, 57–26–13, Revision November 1, 2004; or Airbus A321 SRM, Paragraph 5.D, 57–26–13, Revision February 1, 2005; as applicable; constitutes terminating action for the requirements of paragraphs (g), (h), (k), (l), and (m) of this AD.

**Restatement of Requirements of AD 2008–08–04, Amendment 39–15456 (73 FR 19975, April 14, 2008), With Revised Affected Airplanes**

**Referenced Conditions**

(j) To identify affected airplanes in paragraphs (k), (m), and (o) of this AD, this AD refers to the following conditions:

(1) Airplanes on which the modification of the MLG rib bushes as specified in Airbus Service Bulletin A320–57–1118 has been done.

(2) Airplanes on which a repair of the MLG support rib 5 fitting specified in Airbus A319 Structural Repair Manual (SRM) 57–26–13, paragraph 5.C; or Airbus A320/A321 SRM 57–26–13, paragraph 5.D; or Airbus Repair Instruction R572–58376, Issue C, dated October 15, 2000; has been done.

(3) Airplanes on which replacement in service of the MLG support rib 5 as specified in Airbus Repair Instructions R572–58507 and R572–58209, or Airbus Repair Instructions R572–45020 and R572–45019, as applicable, has been done.

**Repetitive Inspections**

(k) For airplanes on which none of the actions specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD have been done: At the applicable time specified in table 1 of this AD, or before further flight after a hard landing, whichever is first, do a visual inspection or ultrasonic inspection for cracking in the forward lug of the support rib 5 fitting of the left and right MLG, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1138, Revision 01, dated October 27, 2006. Repeat the inspection thereafter at the applicable interval specified in table 1 of this AD or before further flight after a hard landing, whichever is first, until the modification required by paragraph (m) of this AD has been accomplished. Accomplishing the initial inspection terminates the requirements of paragraph (g) of this AD.

TABLE 1—COMPLIANCE TIMES

| Airplanes | Initial inspection | Repetitive interval |
|---|---|---|
| Model A319 and A320 airplanes .... | If the most recent inspection is a detailed inspection done in accordance with paragraph (g) of this AD, inspect within 150 flight cycles after the most recent detailed inspection. | Within 150 flight cycles after a visual inspection. |

TABLE 1—COMPLIANCE TIMES—Continued

| Airplanes | Initial inspection | Repetitive interval |
|---|---|---|
| | If the most recent inspection is an ultrasonic inspection done in accordance with paragraph (h) of this AD, inspect within 940 flight cycles after the most recent ultrasonic inspection. | Within 940 flight cycles after an ultrasonic inspection. |
| Model A321 airplanes | If the most recent inspection is a detailed inspection done in accordance with paragraph (g) of this AD, inspect within 100 flight cycles after the most recent detailed inspection. | Within 100 flight cycles after a visual inspection. |
| | If the most recent inspection is an ultrasonic inspection done in accordance with paragraph (h) of this AD, inspect within 630 flight cycles after the most recent ultrasonic inspection. | Within 630 flight cycles after an ultrasonic inspection. |

**Corrective Action**

(l) If any cracking is found during any inspection required by paragraph (k) of this AD: Before further flight, repair or replace the cracked MLG fitting using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the EASA (or its delegated agent).

**Rib Bushing Modification**

(m) Except for airplanes on which the actions specified in paragraph (j)(3) have been done: Within 60 months after May 19, 2008, modify the rib bushings of the left and right MLG, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–57–1118, Revision 03, dated April 23, 2007; or Revision 04, dated June 4, 2008. Accomplishing this modification terminates the requirements of paragraphs (g) and (k) of this AD, and then the requirements of paragraph (o) of this AD must be done.

**Credit for Actions Done According to Previous Issue of Service Bulletin**

(n) Modifying the lugs of the support rib 5 fitting of the left and right MLG is acceptable for compliance with the requirements of paragraph (m) of this AD if done before May 19, 2008, in accordance with one of the following service bulletins: Airbus Service Bulletin A320–57–1118, dated September 5, 2002; Revision 01, dated August 28, 2003; or Revision 02, dated August 2, 2006.

**NEW REQUIREMENTS OF THIS AD**

**Post-Modification/Post-Repair Inspections**

(o) For airplanes on which the actions specified in paragraph (j)(1) or (j)(2) of this AD have been done: At the later of the times specified in paragraphs (o)(1) and (o)(2) of this AD, do a detailed inspection for cracks of the forward lug of each left-hand and right-hand MLG support rib 5 fitting, in accordance with Airbus Service Bulletin A320–57A1166, dated January 12, 2011. Repeat the inspection thereafter at intervals not to exceed 500 flight cycles.

(1) Within 2,000 flight cycles after accomplishing the modification specified in paragraph (j)(1) or (m) of this AD, or the repair specified in paragraph (j)(2) of this AD, as applicable.

(2) Within 250 flight cycles after the effective date of this AD, without exceeding 3 months after the effective date of this AD.

(p) If any crack is detected during any inspection required by paragraph (o) of this AD: Before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, FAA; or EASA (or its delegated agent).

**Optional Terminating Action**

(q) Replacement of a MLG support rib 5 fitting at any position (LH or RH) as specified in paragraph (j)(3) of this AD terminates the requirements of this AD for the MLG support rib 5 fitting at that position.

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information allows further flight after cracks are found during compliance with certain required actions, paragraphs (l) and (p) of this AD require repair or replacement before further flight.

**Other FAA AD Provisions**

(r) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 227–1405; 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. AMOCs approved previously in accordance with AD 2006–11–04, Amendment 39–14608 (71 FR 29578, May 23, 2006), and AD 2008–08–04, Amendment 39–15456 (73 FR 19975, April 14, 2008), are not approved as AMOCs for the corresponding provisions of this AD.

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

**Related Information**

(s) For related information, refer to MCAI EASA Airworthiness Directive 2011–0011, dated January 21, 2011; Airbus Service Bulletin A320–57–1118, Revision 03, dated April 23, 2007, Airbus Mandatory Service Bulletin A320–57–1118, Revision 04, dated June 4, 2008; Airbus Service Bulletin A320–57–1138, Revision 01, dated October 27, 2006; Airbus A319 Structural Repair Manual (SRM), Paragraph 5.C., 57–26–13, Revision dated November 1, 2004; Airbus A320 SRM, Paragraph 5.D., 57–26–13, Revision dated November 1, 2004; Airbus A321 SRM, Paragraph 5.D., 57–26–13, Revision dated February 1, 2005; and Task 57–29–03–270–801–A–01, Inspection of the Gear Rib Forward and Aft Lug Attachment for the Main Gear, of Chapter 57, Wings, of the Airbus A318/A319/A320/A321 Nondestructive Testing Manual, Revision 89, dated August 1, 2011.

Issued in Renton, Washington, on November 14, 2011.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–30223 Filed 11–22–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–1194; Directorate Identifier 2011–NE–36–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Pratt

& Whitney PW4050, PW4052, PW4056, PW4056(–3), PW4156, PW4060, PW4060(–3), PW4060A, PW4152, PW4152(–3), PW4156A, PW4158, PW4158(–3), PW4460, PW4460(–3), PW4462, and PW4462(–3) turbofan engines. This proposed AD was prompted by reports of five engine in-flight shutdowns and seven unplanned engine removals. This proposed AD would require inspections, cleaning, and engine modifications to address coking in the No. 4 bearing compartment and oil pressure and scavenge tubes. We are proposing this AD to prevent an engine fire, a fractured fan drive shaft, and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by January 23, 2012.

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

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

For service information identified in this proposed AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: (860) 565–8770; fax: (860) 565–4503. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

## Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Stephen Sheely, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7750; fax: (781) 238–7199; email: *stephen.k.sheely@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1194; Directorate Identifier 2011–NE–36–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

## Discussion

We received reports of five engine in-flight shutdowns and seven unplanned engine removals due to clogging of No. 4 bearing compartment oil pressure and scavenge tubes. Investigation has revealed that following all engine shutdowns, excessive heat is conducting into the No. 4 bearing compartment and into the oil pressure and scavenge tubes that pass through the turbine exhaust case struts. This excessive heat causes oil coking and oil flow restriction in the pressure and scavenge tubes and oil nozzle. This condition, if not corrected, could lead to an engine fire, a fractured fan drive shaft, and damage to the airplane.

## Relevant Service Information

We reviewed Pratt & Whitney Alert Service Bulletin (SB) No. PW4ENG–A72–436, Revision 6, dated September 30, 1999. The SB describes procedures for initial and repetitive inspection and cleaning of the No. 4 bearing compartment. We also reviewed Pratt & Whitney SB No. PW4ENG–72–472, Revision 5, dated April 14, 1998, and SB No. PW4ENG–79–76, Revision 4, dated February 14, 2002. The SBs describe procedures for modifications to stop buildup of coking in the No. 4 bearing compartment, and for rerouting of the No. 4 bearing pressure and scavenge tubes. The rerouted tubes are then located below the engine centerline which eliminates the coking problem.

## FAA's Determination

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

## Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

## Costs of Compliance

We estimate that this proposed AD would affect 44 Pratt & Whitney PW4050, PW4052, PW4056, PW4056(–3), PW4156, PW4060, PW4060(–3), PW4060A, PW4152, PW4152(–3), PW4156A, PW4158, PW4158(–3), PW4460, PW4460(–3), PW4462, and PW4462(–3) turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 8 work-hours per engine to perform an inspection and cleaning of the No. 4 bearing compartment, about 7 work-hours per engine to perform the modification to stop buildup of coking in the No. 4 bearing compartment, and about 33.7 work-hours per engine to perform the rerouting of the No. 4 bearing pressure and scavenge tubes. The average labor rate is $85 per work-hour. Required parts would cost about $69,322 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $3,232,306.

## Authority for This Rulemaking

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

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

## Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This

proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify this proposed regulation:*

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Pratt & Whitney:** Docket No. FAA–2011–1194; Directorate Identifier 2011–NE–36–AD.

**(a) Comments Due Date**

We must receive comments by January 23, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Pratt & Whitney PW4050, PW4052, PW4056, PW4056(–3), PW4156, PW4060, PW4060(–3), PW4060A, PW4152, PW4152(–3), PW4156A, PW4158, PW4158(–3), PW4460, PW4460(–3), PW4462, and PW4462(–3) turbofan engines.

**(d) Unsafe Condition**

This AD was prompted by reports of five engine in-flight shutdowns and seven unplanned engine removals due to clogging of No. 4 bearing compartment oil pressure and scavenge tubes. We are issuing this AD to prevent an engine fire, a fractured fan drive shaft, and damage to the airplane.

**(e) Compliance**

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

**(f) Inspection and Cleaning of No. 4 Bearing Compartment for Coking**

(1) Within 1,000 cycles-in-service (CIS) after the effective date of this AD, initially inspect and clean the No. 4 bearing compartment in accordance with Accomplishment Instructions, paragraphs 2.A. through 2.A.(4)(b)3 of Pratt & Whitney Alert Service Bulletin No. PW4ENG–A72–436, Revision 6, dated September 30, 1999.

(2) Thereafter, within every additional 1,000 CIS, perform the inspection and cleaning specified in paragraph (f)(1) of this AD.

**(g) Modification To Stop Buildup of Coking in the No. 4 Bearing Compartment**

(1) At the next engine visit to a maintenance facility that is capable of performing the following on-wing method or in-shop method of modification to the No. 4 bearing compartment, but not to exceed 5 years after the effective date of this AD, do the following:

(i) Replace the No. 4 bearing packing transfer tube assembly;

(ii) Replace the No. 4 bearing internal scavenge tube assembly;

(iii) Remove the No. 4 bearing shield, and the No. 4 bearing shield option; and

(iv) Install new No. 4 bearing shield options.

(2) For doing the on-wing method of the modification, do the work in accordance with Accomplishment Instructions, Paragraphs 2.A. through 2.A.(9)(a)3d of Pratt & Whitney Service Bulletin (SB) No. PW4ENG–72–472, Revision 5, dated April 14, 1998.

(3) For doing the in-shop method of the modification, do the work in accordance with Paragraphs 2.B. through 2.B.(2)(f)2d of Pratt & Whitney SB No. PW4ENG–72–472, Revision 5, dated April 14, 1998.

**(h) Rerouting of the No. 4 Bearing Pressure and Scavenge Tubes**

(1) At the next shop visit at which the engine is sufficiently disassembled to perform the rerouting, but not to exceed 5 years after the effective date of this AD, do the following:

(i) Modify the turbine exhaust case to relocate the No. 4 bearing pressure and scavenge tube ports;

(ii) Replace the internal No. 4 bearing pressure and scavenge tubes;

(iii) Modify or replace the turbine case cooling brackets to support the new No. 4 bearing pressure and scavenge tubes;

(iv) Replace the turbine case manifolds as necessary; and

(v) Install the new brackets and clamps to support the new routing configuration.

(2) Do the work specified in paragraph (h) of this AD in accordance with Accomplishment Instructions paragraph 2 of Pratt & Whitney SB No. PW4ENG–79–76, Revision 4, dated February 14, 2002.

**(i) Terminating Action to the Repetitive Inspections and Cleaning**

Performing the modifications specified in both paragraphs (g) and (h), of this AD is terminating action to the repetitive inspections and cleanings specified in paragraph (f)(2) of this AD.

**(j) Alternative Methods of Compliance (AMOCs)**

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

**(k) Related Information**

(1) For more information about this AD, contact Stephen Sheely, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7750; fax: (781) 238–7199; *email: stephen.k.sheely@faa.gov.*

(2) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone: (860) 565–8770; fax: (860) 565–4503. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Issued in Burlington, Massachusetts, on November 15, 2011.

**Peter A. White,**

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

[FR Doc. 2011–30138 Filed 11–22–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1300

**[Docket No. DEA–341P]**

**RIN 1117–AB31**

## Classification of Two Steroids, Prostanozol and Methasterone, as Schedule III Anabolic Steroids Under the Controlled Substances Act

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) proposes to classify the following two steroids as ''anabolic steroids'' under the Controlled Substances Act (CSA): prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole) and methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one). The Drug Enforcement Administration (DEA) believes that this action is necessary to prevent the abuse and trafficking of

these steroids. If the regulations are amended, these steroids will be listed as Schedule III controlled substances subject to the regulatory control provisions of the CSA.

**DATES:** Electronic comments must be submitted and written comments must be postmarked on or before January 23, 2012. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** To ensure proper handling of comments, please reference ''Docket No. DEA–341'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document and supplemental information to this proposed rule are also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to www.regulations.gov will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, *Attention:* DEA Federal Register Representative/OD, 8701 Morrissette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** Rhea D. Moore, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone (202) 307–7165.

**SUPPLEMENTARY INFORMATION:**

*Posting of Public Comments:* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information'' paragraph.

## Background Information

On November 29, 1990, the President signed into law the Anabolic Steroids Control Act of 1990 (Title XIX of Pub. L. 101–647), which became effective February 27, 1991. This law established and regulated anabolic steroids as a class of drugs under Schedule III of the CSA. As a result, a new anabolic steroid is not scheduled according to the procedures set out in 21 U.S.C. 811, but can be administratively classified as an anabolic steroid through the rulemaking process by adding the steroid to the regulatory definition of an anabolic steroid in 21 CFR 1300.01(b)(4).

On October 22, 2004, the President signed into law the Anabolic Steroid Control Act of 2004 (Pub. L. 108–358), which became effective on January 20, 2005. Section 2(a) of the Anabolic Steroid Control Act of 2004 amended 21 U.S.C. 802(41)(A) by replacing the existing definition of ''anabolic steroid.'' The Anabolic Steroid Control Act of 2004 classifies a drug or hormonal substance as an anabolic steroid if the following four criteria are met: (A) The substance is chemically related to testosterone; (B) the substance is pharmacologically related to testosterone; (C) the substance is not an estrogen, progestin, or a corticosteroid; and (D) the substance is not dehydroepiandrosterone (DHEA). Any substance that meets the criteria is considered an anabolic steroid and must be listed as a Schedule III controlled substance. DEA believes that prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole) and methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one) meet this definition of ''anabolic steroid,'' and is proposing that they be added to the list of anabolic steroids in 21 CFR 1300.01(b)(4).

Anabolic steroids are a class of drugs structurally related to the endogenous hormone testosterone that exert androgenic (masculinizing) as well as anabolic (body building) effects. These effects are mediated primarily through binding of the anabolic steroid to the androgen receptor in target tissues (Evans, 2004). Anabolic effects include promotion of protein synthesis in skeletal muscle and bone, while the androgenic effects are characterized by the development of male secondary sexual characteristics such as hair growth, deepening of the voice, glandular activity, thickening of the skin, and central nervous system effects, to name a few (Kicman, 2008). Anabolic efficacy is characterized by positive nitrogen balance and protein metabolism, resulting in increases in protein synthesis and lean body mass (Evans, 2004). These effects often come at a cost to the healthy individual who experiences clear physical and psychological complications (Trenton and Currier, 2005; Brower, 2002; Hall *et al.,* 2005).

In the United States, only a small number of anabolic steroids are approved for either human or veterinary use. Approved medical uses for anabolic steroids include treatment of androgen deficiency in hypogonadal males, adjunctive therapy to offset protein catabolism associated with prolonged administration of corticosteroids, treatment of delayed puberty in boys, treatment of metastatic breast cancer in women, and treatment of anemia associated with specific diseases (*e.g.,* anemia of chronic renal failure, Fanconi's anemia, and acquired aplastic anemia). However, with the exception of the treatment of male hypogonadism, anabolic steroids are not the first-line treatment due to the availability of other preferred treatment options. DEA is not aware of any legitimate medical use or New Drug Applications (NDA) for the two substances that DEA is proposing to classify by this NPRM as anabolic steroids under the definition set forth under 21 U.S.C. 802(41)(A). Moreover, DEA has not been able to identify any chemical manufacturers currently using these substances as intermediates in their manufacturing process(es).

Adverse health effects are associated with abuse of anabolic steroids and

depend on several factors (*e.g.,* age, sex, anabolic steroid used, the amount used, and the duration of use) (Hall and Hall, 2005; Quaglio *et al.,* 2009). These include cardiovascular, dermatological, behavioral, hepatic, and gender specific endocrine side effects. Anabolic steroids have direct and indirect impact on the developing adolescent brain and behavior (Sato *et al.,* 2008). Furthermore, adolescent abuse of anabolic steroids may result in stunted growth due to premature closure of the growth plates in long bones. In adolescent boys, anabolic steroid abuse can cause precocious sexual development. In both girls and women, anabolic steroid abuse induces permanent physical changes such as deepening of the voice, increased facial and body hair growth, menstrual irregularities, and clitoral hypertrophy. In men, anabolic steroid abuse can cause testicular atrophy, decreased sperm count, and sterility. Gynecomastia (*i.e.,* enlargement of the male breast tissue) can develop with the abuse of those anabolic steroids with estrogenic actions. In both men and women, anabolic steroid abuse can damage the liver and may result in high cholesterol levels, which may increase the risk of strokes and cardiovascular heart attacks. Furthermore, anabolic steroid abuse is purported to induce psychological effects such as aggression, increased feelings of hostility, and psychological dependence and addiction (Brower, 2002; Kanayama *et al.,* 2008). Upon abrupt termination of long-term anabolic steroid abuse, a withdrawal syndrome may appear including severe depression. Additionally, polysubstance abuse is routinely associated with anabolic steroid abuse, where ancillary drugs, including recreational and prescription drugs, are abused in response to unwanted side effects (Hall *et al.,* 2005; Parkinson *et al.,* 2005; Skarberg *et al.,* 2009).

A review of the scientific literature finds adverse health effects including liver toxicity with renal failure reported in conjunction with methasterone abuse (Shah *et al.,* 2008; Jasiurkowski *et al.,* 2006; Singh *et al.,* 2009; Nasr and Ahmad, 2008; and Krishnan *et al.,* 2009). In March 2006, the U.S. Food and Drug Administration (FDA) issued a Warning Letter in response to adverse health effects associated with the product Superdrol (methasterone). In July 2009, FDA issued a warning regarding bodybuilding products containing steroid or steroid-like substances. In this warning, a product containing the THP ether derivative of prostanozol was named in conjunction with other products presenting safety concerns.

**Evaluation of Statutory Factors for Classification as an Anabolic Steroid**

DEA is proposing by this NPRM to classify prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole) and methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one) as anabolic steroids under the definition set forth under 21 U.S.C. 802(41)(A). As noted previously, a drug or hormonal substance is classified as an anabolic steroid by meeting the following four definitional requirements: (A) The substance is chemically related to testosterone; (B) the substance is pharmacologically related to testosterone; (C) the substance is not an estrogen, progestin, or corticosteroid; and (D) the substance is not DHEA.

**(A) Chemically Related to Testosterone**

To classify a substance as an anabolic steroid, a substance must be chemically related to testosterone. A structure activity relationship (SAR) evaluation for each substance compared the chemical structure of the steroid to that of testosterone. Substances with a structure similar to that of testosterone are predicted to possess comparable pharmacological and biological activity.

Prostanozol is also known by the following name: 17β-hydroxy-5α-androstano[3,2-c]pyrazole. DEA determined that the chemical structure of prostanozol is similar to testosterone, differing by only the attachment of a pyrazole ring at carbon 2 (C2) and carbon 3 (C3) positions of the androstane skeleton, replacing the C3-keto group and the lack of a double bond between carbon 4 (C4) and carbon 5 (C5) positions. Similar modifications to testosterone's chemical structure have been documented and, in general, they have been found to be well tolerated, displaying both anabolic and androgenic activity (Fragkaki *et al.,* 2009; Vida, 1969). Clinton and coworkers, in their synthesis of prostanozol, described the modification as a fusion of a pyrazole ring to the androstane steroidal nucleus at C2 and C3 (Clinton *et al.,* 1961). Further analysis finds the chemical structure of prostanozol to be very similar to the anabolic steroid stanozolol. The two structures differ only about a 17α-methyl group (alpha methyl group attached to carbon 17).

Methasterone is known by the following chemical names: 2α,17α-dimethyl-5α-androstan-17β-ol-3-one; 2α,17α-dimethyl-17β-hydroxy-5α-androstan-3-one; 17α-methyl-drostanolone; methasteron; methyldrostanolone; 2α,17α-dimethyldihydrotestosterone; and 2α,17α-dimethyl-etiocholan-17β-ol-3-one. DEA has determined that the chemical structure of methasterone is chemically related to testosterone. The chemical structure of methasterone differs from testosterone by the following three chemical groups: an alpha methyl group at carbon 17 (C17), an alpha methyl group at C2, and the lack of a double bond between spanning C4 and C5. Removal of the C4–C5 double bond (A-ring) and methylation at the C2 and C17 positions has been shown to increase anabolic activity (Zaffroni, 1960; Fragkaki *et al.,* 2009). Furthermore, methyl group substitution at the C2 and C17 has been reported to impair aromatization, thus, prolonging the anabolic effect (Fragkaki *et al.,* 2009).

**(B) Pharmacologically Related to Testosterone**

A substance must also be pharmacologically related to testosterone (*i.e.,* produce similar biological effects) to be classified as a Schedule III anabolic steroid. The pharmacology of a steroid, as related to testosterone, can be established by performing one or more of the following androgenic and anabolic activity assays: ventral prostate assay, seminal vesicle assay, levator ani assay, and androgen receptor binding and efficacy assays. These assays are described below.

*Ventral Prostate Assay, Seminal Vesicle Assay, and Levator Ani Assay:* The classic scientific procedure for evaluating androgenic (masculinizing) and anabolic (muscularizing) effects of a steroid is the ventral prostate assay, seminal vesicle assay, and levator ani assay. This testing paradigm allows for the direct comparison to testosterone. Select male accessory tissues (*i.e.,* the ventral prostate, seminal vesicles, and levator ani muscle) are testosterone sensitive, specifically requiring testosterone to grow and remain healthy. Upon the removal of the testes (*i.e.,* castration), the primary endogenous source of testosterone is eliminated causing the atrophy of the ventral prostate, seminal vesicles, and levator ani muscle (Eisenberg *et al.,* 1949; Nelson *et al.,* 1940; Scow, 1952; Wainman and Shipounoff, 1941). Numerous scientific studies have demonstrated the ability of exogenous testosterone or a pharmacologically similar steroid administered to rats following castration to maintain the normal weight and size of all three testosterone sensitive organs (Biskind and Meyer, 1941; Dorfman and

Dorfman, 1963; Dorfman and Kincl, 1963; Kincl and Dorfman, 1964; Nelson *et al.,* 1940; Scow, 1952; Wainman and Shipounoff, 1941). Thus, a steroid with testosterone-like activity will also prevent the atrophy of these three testosterone-dependent organs in castrated rats.

Castrated male rats are administered the steroid for a number of days, then the rats are euthanized and the previously described tissues are excised and weighed. Tissue weights from the three animal test groups are compared, castrated animals alone, castrated animals receiving the steroid, and healthy intact animals (control), to assess anabolic and androgenic activity. A reduction in tissue weights relative to the control group suggests a lack of androgenic and/or anabolic activity. An increase in tissue weights relative to the castrated rats receiving no steroid suggests an androgenic and/or anabolic effect.

*Androgen Receptor Binding and Efficacy Assay:* Anabolic steroids bind with the androgen receptor to exert their biological effect. Affinity for the receptor is evaluated in the receptor binding assay, while the transactivation (functional) assay provides additional information as to both affinity and ability to activate the receptor. Receptor binding and transactivation studies are valuable tools in evaluating pharmacological activity and drawing comparisons to other substances. A steroid displaying affinity for the androgen receptor and properties of being an agonist in transactivation studies is determined to be pharmacologically similar to testosterone.

Studies used to evaluate anabolic steroids are the androgen receptor binding assay and the androgen receptor transactivation assay. Both are well-established and provide significant utility in evaluating steroids for affinity to their biological target and the modulation of activity. The androgen receptor binding assay provides specific detail as to the affinity of a steroid for the androgen receptor (biological target of anabolic steroids). To assess further whether the steroid is capable of activating the androgen receptor, the androgen receptor transactivation assay evaluates the binding of a steroid to the androgen receptor and subsequent interaction with DNA. In this study, transcription of a reporter gene provides information as to a steroid's ability to modulate a biological event. This activity measurement provides information as to the potency of a steroid to bind to a receptor and either initiate or inhibit the transcription of the reporter gene. The androgen receptor binding assay and androgen receptor transactivation assay are highly valuable tools in assessing the potential activity of a steroid and comparing the activity to testosterone.

*Results of the Androgenic and Anabolic Activity Assays*

DEA reviewed the published scientific literature, and pharmacological studies were undertaken to collect additional information on prostanozol and methasterone in several different androgenic and anabolic activity assays.

Findings from these studies indicate that in addition to being structurally similar to testosterone, prostanozol and methasterone have similar pharmacological activity as testosterone.

*Prostanozol*

The chemical synthesis and anabolic and androgenic effects of prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole) were published in 1961 (Clinton *et al.,* 1961). Clinton and coworkers evaluated the anabolic activity by means of nitrogen balance and androgenic activity based on weight changes of the ventral prostrate of prostanozol upon subcutaneous administration to rats with the reference standard testosterone propionate. The potency ratio of anabolic activity to androgenic activity for prostanozol was reported to be eight (Clinton *et al.,* 1961). In another study, prostanozol was reported to have approximately the same relative binding affinity for human sex steroid binding protein as testosterone (Cunningham *et al.,* 1981).

To build on these findings, a pharmacological study [1] was conducted to evaluate the anabolic and androgenic effects of prostanozol in castrated male rats. Results were compared to testosterone by a similar protocol. Administration of prostanozol to castrated male rats by subcutaneous injection prevented the atrophy (loss in weight) of the ventral prostate, seminal vesicles, and levator ani muscle.[1] These testosterone sensitive tissues experienced increases in weight comparable to testosterone in castrated male rats. Results from this study support that prostanozol possesses both androgenic and anabolic activity. Additional studies were conducted to further assess prostanozol's anabolic effect. In a competitive binding assay, prostanozol was found to possess affinity for the androgen receptor comparable to testosterone.[1] In the androgen receptor transactivation assay, prostanozol displayed increased activity relative to testosterone.[1] Effects elicited by prostanozol in this transactivation assay were consistent and comparable to those of testosterone. Taken together, data from in vitro and in vivo assays indicate the pharmacology of prostanozol to be similar to testosterone.

*Methasterone*

The synthesis of methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one) was reported in 1956 and the anabolic activity in 1959 (Ringold and Rosenkranz, 1956; Ringold *et al.,* 1959). Methasterone was described as a potent anabolic agent exhibiting weak androgenic activity in the castrated male rat (Ringold *et al.,* 1959). Zaffaroni and coworkers reported methasterone possessed one-fifth the androgenic activity and four times the anabolic activity of the anabolic steroid methyltestosterone, when administered orally to the experimental animal (Zaffaroni *et al.,* 1960).

Additional pharmacological studies were undertaken to further evaluate the androgenic and anabolic effects of methasterone. [1] Methasterone was administered subcutaneously and orally to castrated male rats. By both routes of administration, methasterone prevented the atrophy (loss in weight) of ventral prostate, seminal vesicles, and levator ani muscle. Tissue weight increases for the castrated methasterone-treated animals were comparable to the castrated rats treated with testosterone and methyltestosterone. These results were consistent with earlier findings that methasterone is anabolic and androgenic (Zaffaroni, 1960; Ringold *et al.,* 1959). Functional assays were also undertaken to further evaluate methasterone.[1] Methasterone displayed affinity for the androgen receptor comparable to testosterone in a competitive binding assay.[1] In the androgen receptor transactivation assay, methasterone displayed increased activity relative to testosterone.[1] Effects elicited by methasterone in the androgen transactivation assay were consistent and comparable to those of testosterone. Collectively, in vivo and in vitro results indicate that the pharmacology of methasterone is similar to testosterone.

**(C) Not Estrogens, Progestins, and Corticosteroids**

DEA has determined that prostanozol and methasterone are unrelated to estrogens, progestins, and corticosteroids. DEA evaluated the SAR for each of the substances. The chemical structure of each substance was

[1] 2009 BIOQUAL, Inc. study commissioned by the National Institutes of Health on behalf of DEA.

compared to that of estrogens, progestins, and corticosteroids, since chemical structure can be related to its pharmacological and biological activity. DEA found that these two substances lack the necessary chemical structures to impart significant estrogenic activity (*e.g.,* aromatic A ring) (Duax *et al.,* 1988; Jordan *et al.,* 1985; Williams and Stancel, 1996), progestational activity (*e.g.,* 17β-alkyl group) (Williams and Stancel, 1996), or corticosteroidal activity (*e.g.,* 17β-ketone group or 11β-hydroxyl group) (Miller *et al.,* 2002). Furthermore, methasterone was reported to display anti-estrogenic activity in mouse assay to assess estrogen stimulated uterine growth (Dorfman *et al.,* 1961). To assess the estrogenic, progestational, and corticosteroid activity of prostanozol and methasterone, these substances were evaluated in receptor binding and functional transactivation assays. Prostanozol and methasterone showed low binding affinity for the estrogen, progesterone, and glucocorticoid receptors. Furthermore, these steroids displayed low to no transactivation mediated by the estrogen receptors, progesterone receptors, or glucocorticoid receptors. Therefore, based on these data, prostanozol and methasterone are not estrogens, progestins, or corticosteroids and these anabolic steroids are not exempt from control on this basis.

**(D) Not Dehydroepiandrosterone**

Dehydroepiandrosterone, also known as DHEA, is exempt from control as an anabolic steroid by definition (21 U.S.C. 802(41)(A)). Prostanozol and methasterone are not dehydroepiandrosterone and therefore, are not exempt from control on this basis.

**Conclusion**

Therefore, based on the above, DEA concludes that prostanozol and methasterone meet the CSA definition of ''anabolic steroid'' because each substance is: (A) Chemically related to testosterone; (B) pharmacologically related to testosterone; (C) not an estrogen, progestin, or a corticosteroid; and (D) not DHEA (21 U.S.C. 802(41)). All anabolic steroids are classified as Schedule III controlled substances (21 U.S.C. 812). Once a substance is determined to be an anabolic steroid, DEA has no discretion regarding the scheduling of these substances. As discussed further below, all requirements pertaining to controlled substances in Schedule III would pertain to these substances.

**Impact of Proposed Rule and Effect of Classifying These Substances as Anabolic Steroids**

If this rulemaking is finalized as proposed, DEA will classify prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole) and methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one) as Schedule III anabolic steroids. If classified as Schedule III anabolic steroids, any person who manufactures, distributes, dispenses, imports, or exports prostanozol or methasterone or who engages in research or conducts instructional activities with respect to these two substances would be required to obtain a Schedule III registration in accordance with the CSA and its implementing regulations. Manufacturers and importers of these two substances would be required to register with DEA and would be permitted to distribute these substances only to other DEA registrants. Only persons registered as dispensers would be allowed to dispense these substances to end users. The CSA defines a practitioner as ''a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.'' 21 U.S.C. 802(21). At present, there are no approved medical uses for these two substances. Until a manufacturer applies to the FDA and gains approval for products containing these substances, no person may dispense them in response to a prescription.

Manufacture, import, export, distribution, or sale of prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole) and methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one) except by DEA registrants, would become a violation of the CSA that may result in imprisonment and fines (see, *e.g.,* 21 U.S.C. 841, 960). Possession of these two steroids, unless legally obtained, would also become subject to criminal penalties (21 U.S.C. 844).

In addition, under the CSA, these two substances could be imported only for medical, scientific, or other legitimate uses (21 U.S.C. 952(b)) under an import declaration filed with DEA (21 CFR 1312.18). Importation of these substances would be illegal unless the person importing these substances is registered with DEA as an importer or researcher and files the required declaration for each shipment. An individual who purchases either of these substances directly from foreign companies and has them shipped to the United States will be considered to be importing even if the steroids are intended for personal use. Illegal importation of these substances would be a violation of the CSA that may result in imprisonment and fines (21 U.S.C. 960).

**Requirements for Handling Substances Defined as Anabolic Steroids**

Upon consideration of public comments from this NPRM, DEA may issue a final rule classifying prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole) and methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one) as anabolic steroids. If classified as anabolic steroids, prostanozol and methasterone would become subject to CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importation, and exportation of a Schedule III controlled substance, including the following:

*Registration.* Any person who manufactures, distributes, dispenses, imports, exports, or engages in research or conducts instructional activities with a substance defined as an anabolic steroid, or who desires to engage in such activities, would be required to be registered to conduct such activities with Schedule III controlled substances in accordance with 21 CFR Part 1301.

*Security.* Substances defined as anabolic steroids would be subject to Schedule III–V security requirements and would be required to be manufactured, distributed, and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76 and 1301.77.

*Labeling and Packaging.* All labels and labeling for commercial containers of substances defined as anabolic steroids would be required to comply with requirements of 21 CFR 1302.03–1302.07.

*Inventory.* Every registrant required to keep records and who possesses any quantity of any substance defined as an anabolic steroid would be required to keep an inventory of all stocks of the substances on hand pursuant to 21 U.S.C. 827 and 21 CFR 1304.03, 1304.04 and 1304.11. Every registrant who desires registration in Schedule III for any substance defined as an anabolic steroid would be required to conduct an inventory of all stocks of the substances on hand at the time of registration.

*Records.* All registrants would be required to keep records, as generally provided in 21 U.S.C. 827(a) and specifically pursuant to 21 CFR 1304.03, 1304.04, 1304.05, 1304.21, 1304.22, 1304.23 and 1304.26.

*Prescriptions.* All prescriptions for these Schedule III substances or for products containing these Schedule III substances would be required to be issued pursuant to 21 U.S.C. 829(b) and 21 CFR 1306.03–1306.06 and 1306.21–1306.27. All prescriptions for these Schedule III compounds or for products containing these Schedule III substances, if authorized for refilling, would be limited to five refills within six months of the date of issuance of the prescription. Controlled substance dispensing via the Internet would have to comply with 21 U.S.C. 829(e).

*Importation and Exportation.* All importation and exportation of any substance defined as an anabolic steroid would be required to be in compliance with 21 U.S.C. 952(b) and 953(e) and 21 CFR Part 1312.

*Criminal Liability.* Any activity with any substance defined as an anabolic steroid not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act would be unlawful.

**Disposal of Anabolic Steroids**

If this regulation is finalized as proposed, persons who possess substances that become classified as anabolic steroids and who wish to dispose of them rather than becoming registered to handle them should contact their local DEA Diversion field office for assistance in disposing of these substances legally. The DEA Diversion field office will provide the person with instructions regarding the disposal. A list of local DEA Diversion field offices may be found at *http://www.deadiversion.usdoj.gov.*

**Regulatory Analyses**

*Regulatory Flexibility Act*

The Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612). DEA is not able to determine whether this regulation, if promulgated as a Final Rule, will not have a significant economic impact on a substantial number of small entities. DEA has not identified any company based in the United States that manufactures or distributes these substances. Thus, DEA does not believe this proposed rule would have a significant economic impact on a substantial number of small entities. Because DEA is unable to determine whether this regulation as proposed would have a significant economic impact on a substantial number of small entities, DEA seeks comment on whether this regulation, if promulgated as a Final Rule, will have a significant economic impact on a substantial number of small entities.

As of March 2010, DEA had identified approximately 75 dietary supplements that were currently or had been promoted for building muscle and increasing strength that purported to contain prostanozol or methasterone. Thirteen dietary supplements were purported to contain prostanozol and 62 dietary supplements were purported to contain methasterone. These dietary supplements are marketed and sold over the Internet.

The manufacturers and distributors of dietary supplements purported to contain prostanozol and methasterone also sell a variety of other dietary supplements. DEA has identified a substantial number of Internet distributors that sell these dietary supplements. However, these distributors also sell a variety of other nutritional products. Without information on the percentage of revenues derived from these dietary supplements, DEA is not able to determine the economic impact of the removal of these dietary supplements alone on the business of the firms. These steroids have been the focus of warning letters issued by the FDA. However, products continue to be marketed despite these warnings. DEA has not been able to identify any chemical manufacturers that are currently using these substances as intermediates in their manufacturing process(es).

As of March 2010, DEA had identified 13 chemical manufacturers and distributors that sell at least one of the two steroids addressed in this NPRM. Most of these companies are located in China and sell a variety of other anabolic steroids. DEA notes that, as the vast majority of entities handling these substances are Internet based, it is virtually impossible to accurately quantify the number of persons handling these substances at any given time. DEA has not identified any company based in the United States that manufactures or distributes these substances. DEA notes, upon placement into Schedule III, these substances may be used for analytical purposes.

*Executive Orders 12866 and 13563*

This rulemaking has been drafted in accordance with the principles of Executive Order 12866, 1(b), as reaffirmed by Executive Order 13563. This rule is not a significant regulatory action but has been reviewed by the Office of Management and Budget. As discussed above, the effect of this rule would be to remove products containing these substances from the over-the-counter marketplace. DEA has no basis for estimating the size of the market for these products. DEA notes, however, that virtually all of the substances are imported. According to U.S. International Trade Commission data, the import value of all anabolic steroids in 2009 was $5.9 million. These two substances would be a subset of those imports. The total market for products containing these substances, therefore, is probably quite small. Moreover, DEA believes that the importation of these two substances is for illegitimate purposes.

The benefit of controlling these substances is to remove from the marketplace substances that have dangerous side effects and no legitimate medical use in treatment in the United States. As discussed in detail above, these substances can produce serious health effects in adolescents and adults. If medical uses for these substances are developed and approved, the drugs would be available as Schedule III controlled substances in response to a prescription issued by a medical professional for a legitimate medical purpose. Until that time, however, this action would bar the importation, exportation, and sale of these two substances except for legitimate research or industrial uses.

*Executive Order 12988*

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

*Executive Order 13132*

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

*Executive Order 13175*

This proposed rule will not have Tribal implications and will not impose substantial direct compliance costs on Indian Tribal governments.

*Paperwork Reduction Act*

This rule proposes to regulate two anabolic steroids, which are neither approved for medical use in humans nor approved for administration to cattle or

other non-humans. Under this proposal, only chemical manufacturers who may use these substances as chemical intermediates for the synthesis of other steroids would be required to register with DEA under the CSA. However, DEA has not been able to identify any chemical manufacturers that are currently using these substances as intermediates in their manufacturing process(es). Although this proposal is unlikely to impose a new collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521, DEA is nevertheless seeking input from the chemical industry on any manufacturing process(es) that may be affected.

*Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $136,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

**List of Subjects in 21 CFR Part 1300**

Chemicals, Drug traffic control.

For the reasons set out above, 21 CFR part 1300 is proposed to be amended as follows:

## PART 1300—DEFINITIONS

1. The authority citation for part 1300 continues to read as follows:

**Authority:** 21 U.S.C. 802, 821, 829, 871(b), 951, 958(f).

2. Section 1300.01 is proposed to be amended by:

A. Redesignating paragraphs (b)(4)(xxxii) through (b)(4)(lxiii) as (b)(4)(xxxiii) through (b)(4)(lxiv),

B. Adding a new paragraph (b)(4)(xxxii),

C. Further redesignating newly designated paragraphs (b)(4)(lviii) through (b)(4)(lxiv) as (b)(4)(lix) through (b)(4)(lxv), and

D. Adding new paragraph (b)(4)(lviii).

The additions read as follows:

**§ 1300.01 Definitions relating to controlled substances.**

* * * * *

(b) * * *

(4) * * *

(xxxii) Methasterone (2α,17α-dimethyl-5α-androstan-17β-ol-3-one)

* * * * *

(lviii) Prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole)

* * * * *

Dated: November 8, 2011.

**Michele M. Leonhart,**

*Administrator.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–149625–10]**

**RIN 1545–BK03**

## Application of the Segregation Rules to Small Shareholders

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under section 382 of the Internal Revenue Code (Code). These proposed regulations provide guidance regarding the application of the segregation rules to public groups under section 382 of the Code. These regulations affect corporations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by February 21, 2012.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–149625–10), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–149625–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–149625–10).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Stephen R. Cleary, (202) 622–7750; concerning submission of comments or to request a public hearing, Oluwafunmilayo (Funmi) P. Taylor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

*1. Segregation and Aggregation—Statute, Legislative History, and Current Regulations*

Section 382 imposes a limitation on a corporation's use of net operating loss carryovers following a change in ownership. The legislative history explains that a limitation is necessary following a change in ownership because new shareholders otherwise would have an opportunity to contribute income-producing assets (or divert income opportunities) to the corporation, thus inappropriately accelerating the use of net operating loss carryovers. The section 382 limitation is intended to prevent a corporation from obtaining greater loss utilization than it could have achieved absent a change in ownership. S. Rep. No. 99–313 at 232 (1986).

A loss corporation has an ownership change if the percentage of stock of a loss corporation that is owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock of the loss corporation owned by such shareholders at any time during the testing period (generally, a three-year period). For purposes of section 382, the attribution rules of section 318(a)(2) apply, without limitation, to treat individuals as the owners of loss corporation stock. Pursuant to section 382(g)(4)(A), individual shareholders who own less than five percent of a loss corporation are aggregated and treated as a single 5-percent shareholder (a public group).

The regulations extend the public group concept to situations in which a loss corporation is owned by one or more entities, as defined in § 1.382–3(a) (generally, partnerships, corporations, estates, and trusts). If an entity directly or indirectly owns five percent or more of the loss corporation, that entity has its own public group if its owners who are not 5-percent shareholders own, in the aggregate, five percent or more of the loss corporation. (Such an entity is referred to as a 5-Percent Entity in this preamble.)

The segregation rules, which are generally contained in § 1.382–2T(j), and the exceptions thereto, which are generally contained in § 1.382–3(j), apply to certain transactions affecting ownership by the loss corporation's direct public group and by the public groups of a 5-Percent Entity. The application of the segregation rules results in the creation of a new public group in addition to the one (or more) that existed previously. That new group is treated as a new 5-percent shareholder that increases its ownership interest in the loss corporation.

Section 382(g)(4)(B) mandates application of the segregation rules to transactions constituting equity structure shifts of the loss corporation. Generally, equity structure shifts are acquisitive asset reorganizations and recapitalizations under section 368. Section 382(g)(3)(B) provides regulatory authority to treat public offerings and similar transactions as equity structure shifts. Pursuant to that authority, the current segregation rules, subject to the cash issuance and small issuance exceptions (described in this preamble), treat issuances of stock under section 1032, redemptions, and redemption-like transactions as segregation events. The segregation rules also apply to transfers of loss corporation stock by an individual 5-percent shareholder to public shareholders and a 5-Percent Entity's transfer of loss corporation stock to public shareholders.

The small issuance and cash issuance exceptions exempt certain amounts of stock issuances from the segregation rules. Generally, the small issuance exception exempts the total amount of stock issued during a taxable year to the extent it does not exceed 10 percent of the total value of the corporation's

outstanding stock at the beginning of the taxable year or 10 percent of the class of stock issued and outstanding at the beginning of the taxable year (the small issuance limitation). However, the small issuance exception does not apply to any issuance of stock that, by itself, exceeds the small issuance limitation. If stock is issued solely for cash, the cash issuance exception exempts a percentage of the total stock issued equal to 50 percent of the aggregate percentage ownership interest of the public groups of the corporation immediately before the issuance. In determining the size of the issuance for this purpose, stock issued to 5-percent shareholders is taken into account. If the small issuance exception excludes only a portion of a stock issuance, the cash issuance exception may apply to the portion not excluded under the small issuance exception. Pursuant to a grant of regulatory authority in section 382(m)(4), the small issuance exception can apply to recapitalizations, but otherwise, neither exception applies to equity structure shifts.

*2. Notice 2010–49*

Notice 2010–49, 2010–27 I.R.B. 10, invited public comment relating to possible modifications to the regulations under section 382 regarding the treatment of shareholders who are not 5-percent shareholders (Small Shareholders). See § 601.601(d)(2)(ii)(b).

Notice 2010–49 describes two general approaches—the Ownership Tracking Approach and the Purposive Approach—and sets forth some of the policy considerations underlying each approach. Both approaches recognize that a primary abuse section 382 seeks to prevent involves an acquisition of loss corporation stock followed by the contribution of income-producing assets or the diversion of income-producing opportunities to the corporation. The two approaches differ, however, in the extent they seek to identify and limit their effect to circumstances in which that abuse is most likely to occur.

Under the Ownership Tracking Approach, generally it is of no significance whether the shareholders who increase their ownership are Small Shareholders or 5-percent shareholders. This approach ensures that abusive transactions are addressed by tracking all changes in ownership without regard to their particular circumstances. Thus, any transaction that allows the corporation to track the increase in ownership interests held by Small Shareholders results in the segregation of Small Shareholders into a new public group, which is treated as a 5-percent shareholder. However, the Ownership Tracking Approach makes a concession to administrative convenience and acknowledges that ''public trading,'' which is the purchase by one Small Shareholder of stock from another Small Shareholder, should not be taken into account because it is unduly burdensome for a corporation to take into account all such transactions. See § 1.382–2T(e)(1)(ii).

Consistent with the purpose of section 382, the Purposive Approach seeks to identify more specifically the circumstances in which abuses are likely to arise. This approach reflects the view that it is unnecessary to take into account all readily identifiable acquisitions of stock by Small Shareholders, because Small Shareholders generally are not in a position to acquire loss corporation stock in order to contribute income-producing assets or divert income-producing opportunities.

The current regulations primarily reflect the Ownership Tracking Approach. Although certain provisions may seem to follow the Purposive Approach, their justification is nevertheless based upon the Ownership Tracking Approach. For example, the cash issuance exception of § 1.382–3(j)(3) reduces the segregation effect of an issuance of stock to Small Shareholders but is justified on the grounds that there is likely to be substantial overlap between Small Shareholders who acquire stock in such an issuance and the Small Shareholders who already own stock.

**Explanation of Provisions**

*1. Overview*

The IRS and the Treasury Department received a range of comments in response to Notice 2010–49. Some comments endorsed substantial changes to the existing regulations, while others supported changes within the existing regulatory framework. One commenter supporting more modest changes to the existing regulations suggested that an overhaul of the current regulations likely would produce new uncertainties and complexities. Additionally, the comment observed that revisions allowing substantial infusions of capital into a loss corporation without section 382 implications would be counter to section 382 policies.

After consideration of the comments received, these regulations propose revisions following the Purposive Approach within the existing regulatory framework. Consistent with the Purposive Approach, these proposed regulations are intended to lessen the administrative burden and section 382 implications associated with transactions that are unlikely to implicate section 382 policy concerns. In general, these proposed regulations employ objective criteria to implement the Purposive Approach. The IRS and the Treasury Department believe that, where practicable, objective rules best serve the interests of loss corporations that desire certainty with respect to their section 382 positions, and best serve the interests of the government in fairly and consistently administering a complex statutory scheme.

Comments that embraced a more fundamental reform of the existing regulations were not incorporated into this proposal primarily because the approaches introduced significant subjectivity. For example, one commenter suggested that, subject to an anti-abuse rule, the segregation rules should not apply to redemption transactions. Another commenter suggested that if certain stock issuances and redemptions of Small Shareholders are sufficiently related, those transactions should be treated as public trading. These suggestions were not incorporated in favor of proposals that will provide greater certainty of result to the government and to loss corporations.

*2. Proposed Revisions*

A. Inapplicability of the Segregation Rules to Certain Secondary Transfers

Several of the comments supported rendering the segregation rules inoperative to transfers of loss corporation stock to Small Shareholders by 5-Percent Entities or individuals who are 5-percent shareholders. These comments also supported relief from the segregation rules for transactions in which an ownership interest in a 5-Percent Entity is transferred to a public owner or a 5-percent owner who is not a 5-percent shareholder.

The IRS and the Treasury Department agree that adoption of these exceptions is appropriate because these transactions do not introduce new capital into the loss corporation and because direct or indirect ownership of the loss corporation becomes less concentrated, thus diminishing the opportunity for loss trafficking. Furthermore, limiting the creation of additional public groups where loss trafficking is not implicated simplifies tax compliance and administration. Accordingly, these proposed regulations generally render the segregation rules inoperative to transfers of loss corporation stock to Small Shareholders by 5-Percent Entities or individuals who are 5-percent shareholders. In these

cases, the stock transferred will be treated as being acquired proportionately by the public groups existing at the time of the transfer. This rule also applies to transfers of ownership interests in 5-Percent Entities to public owners and to 5-percent owners who are not 5-percent shareholders.

B. Inapplicability of the Segregation Rules to Certain Redemptions

Two of the comments supported limiting application of the segregation rules in the case of redemptions. These commenters observed that, generally, a loss corporation's redemption of its stock from Small Shareholders does not raise loss trafficking concerns because (i) the capital of the loss corporation is contracting, and (ii) Small Shareholders generally cannot traffic in losses. One comment supported a rule that would, subject to an anti-abuse rule, render the segregation rules inapplicable to all redemptions. In addition to supporting the inapplicability of the segregation rules to all redemptions, the comment supported an objective rule for exempting redemptions based upon the mechanics of the small issuance exception.

In general, these proposed regulations adopt a rule based upon the mechanics of the small issuance exception to obviate the need for a subjective anti-abuse rule. Like the small issuance exception, this exception for redemptions exempts from segregation, at the loss corporation's option, either 10 percent of the total value of the loss corporation's stock at the beginning of the taxable year, or 10 percent of the number of shares of the redeemed class outstanding at the beginning of the taxable year. Where this exception applies, each public group existing immediately before the redemption will be treated as redeeming its proportionate share of exempted stock.

Like the small issuance exception, the small redemption exception will allow a loss corporation to plan its affairs as of the beginning of each taxable year. Furthermore, consistent with the Purposive Approach, the exception reduces administrative burden and the section 382 impact of transactions in which the abuses that section 382 is intended to prevent are unlikely to arise.

C. Inapplicability of the Segregation Rules to 5-Percent Entities in Certain Circumstances

One commenter expressed the need for relief from tracking shifts of ownership by Small Shareholders of 5-Percent Entities. The comment expressed that, in many cases, a loss corporation cannot obtain information relating to this ownership—either because the entity chooses not to respond or because the entity is prohibited from sharing information regarding its owners with the loss corporation. The inability to obtain this information may restrict capital-raising activities beyond what section 382 requires, because the loss corporation may choose to make worst-case assumptions about shifts in ownership when the relevant information cannot be obtained. The IRS and the Treasury Department agree that it is appropriate to provide relief in situations in which tracking shifts in ownership by Small Shareholders does not further the policy objectives of section 382. Furthermore, the IRS and the Treasury Department recognize that application of the segregation rules and the exceptions thereto present compliance issues for taxpayers and issues of tax administration for the government. Accordingly, these proposed regulations limit the situations in which the segregation rules apply to situations that potentially implicate the policies underlying section 382.

Under these proposed regulations, the segregation rules will not apply to a transaction if, on a testing date on which the rules would otherwise apply (i) the 5-Percent Entity owns ten percent or less (by value) of all the outstanding stock of the loss corporation (the ownership limitation), and (ii) the 5-Percent Entity's direct or indirect investment in the loss corporation does not exceed 25 percent of the entity's gross assets (the asset threshold). For purposes of the asset threshold, the entity's cash and cash items within the meaning of section 382(h)(3)(B)(ii) are not taken into account. Generally, the loss corporation may establish the ownership limitation through either actual knowledge or, absent actual knowledge to the contrary, the presumptions regarding stock ownership in § 1.382–2T(k)(1).

The IRS and the Treasury Department believe that the proposal strikes an appropriate balance between reducing complexity and safeguarding section 382 policies. The proposal will enable loss corporations to disregard indirect changes in its ownership that may, under the current regulations, require burdensome information gathering and may unnecessarily impede the loss corporation's ability to reorganize its affairs. At the same time, however, the proposal imposes criteria that protect the government's interests. The asset threshold makes it unlikely that the loss corporation's attributes motivate transactions in the equity of 5-Percent Entities. Additionally, like the small issuance exception and the relief for redemptions that appears elsewhere in this proposal, the ownership limitation makes it unlikely that transactions among Small Shareholders one or more tiers removed from the loss corporation implicate loss trafficking concerns. (Note that the asset threshold and the ownership limitation do not apply to the exception for secondary transfers described elsewhere in this preamble because secondary transfers do not implicate the same policy concerns as transactions in which loss corporations can obtain additional capital.)

D. Clarification of § 1.382–2T(j)(3)

Section 1.382–2T(j)(3) provides that, in general, the segregation rules apply to sales of loss corporation stock by individual 5-percent shareholders and by first tier entities. This section further provides that the ''principles'' of the foregoing apply to ''transactions in which an ownership interest in a higher tier entity that owns five percent or more of the loss corporation (without regard to § 1.382–2T(h)(i)(A)) or a first tier entity is transferred to a public owner or a 5-percent owner who is not a 5-percent shareholder.'' This proposed regulation clarifies that the segregation rules apply to such a transfer only if the seller indirectly owns five percent or more of the loss corporation. In the case of a sale by an entity, ownership is determined without regard to § 1.382–2T(h)(i)(A).

E. Small Issuance and Cash Issuance Exceptions

Several of the comments requested expansion of the small issuance and cash issuance exceptions as a percentage of stock that is exempted from the segregation rules. Some of these comments also suggested that the cash issuance exception should apply to issuances of stock for non-cash property, including debt.

As previously discussed, transactions that infuse new capital into a loss corporation are of particular concern to section 382 policies because the capital infusion can accelerate the use of tax attributes. This is the case even if the new investors are Small Shareholders. Moreover, in its current form, the cash issuance exception dilutes the owner shifts that are attributable to capital-raising transactions.

The IRS and the Treasury Department request comments as to whether further refinement of either or both of these exceptions might be warranted in the context of any potential expansion of

the exceptions proposed in this document.

F. Coordinated Acquisitions

Questions have arisen concerning the application of § 1.382–3(a), which provides, in part, that a group of persons making a coordinated acquisition of stock can constitute an entity for purposes of section 382. Adding additional distinctions between larger and smaller shareholders, as proposed here, will increase the significance of this provision. The IRS and the Treasury Department are interested in comments as to circumstances under which a group of investors should be aggregated into a single entity based on their understandings or communications with each other or with third persons, such as the loss corporation or an underwriter.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The certification is based on the fact that this rule would not impose new burdens on small entities and in fact, may reduce the recordkeeping burden on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Request for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the specific requests for comments made elsewhere in this preamble, the IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection at *http://www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.382–3 also issued under 26 U.S.C. 382(g)(4)(C) and 26 U.S.C. 382(m). * * *

**Par. 2.** Section 1.382–3 is amended as follows:

1. Adding paragraph (i).
2. Revising the heading of paragraph (j) and the introductory text of paragraph (j)(1).
3. Redesignating paragraphs (j)(13) and (j)(14) as (j)(16) and (j)(17).
4. Adding new paragraphs (j)(13) through (j)(14).
5. Adding new *Examples* 5, 6, 7, 8, 9, 10, 11, and 12 to newly redesignated paragraph (j)(16).
6. Revising newly redesignated paragraph (j)(17).

The revisions and additions read as follows:

### § 1.382–3 Definitions and rules relating to a 5-percent shareholder.

* * * * *

(i) *Segregation rules applicable to transactions involving first tier or higher tier entities*—(1) *In general.* The last sentence of § 1.382–2T(j)(3)(i) applies only if the transferor of the ownership interest indirectly owns five percent or more of the loss corporation. If the transferor is an entity, ownership is determined without regard to the application of § 1.382–2T(h)(2)(i)(A).

(2) *Effective/Applicability date.* This paragraph (i) applies to testing dates occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

(j) *Modification of the segregation rules of § 1.382–2T(j)(2)(iii) and (3)*—(1) *Introduction.* This paragraph (j) exempts, in whole or in part, certain transfers of stock from the segregation rules of § 1.382–2T(j)(2)(iii) and (3). Terms and nomenclature used in this paragraph (j), and not otherwise defined herein, have the same meanings as in section 382 and the regulations issued under section 382.

* * * * *

(13) *Secondary transfer exception.* The segregation rules of § 1.382–2T(j)(3)(i) will not apply to the transfer of a direct ownership interest in the loss corporation by a first tier entity or an individual that owns five percent or more of the loss corporation to public shareholders. Instead, each public group existing at the time of the transfer will be treated under § 1.382–2T(j)(3)(i) as acquiring its proportionate share of the stock exempted from the application of § 1.382–2T(j)(3)(i). The segregation rules also will not apply if an ownership interest in an entity that owns five percent or more of the loss corporation (determined without regard to the application of § 1.382–2T(h)(2)(i)(A)) is transferred by either a 5-percent owner that is a 5-percent shareholder or a higher tier entity owning five percent or more of the loss corporation (determined without regard to the application of § 1.382–2T(h)(2)(i)(A)), provided that the transferee is either a public owner or a 5-percent owner who is not a 5-percent shareholder. Instead, each public group of the entity existing at the time of the transfer is treated under § 1.382–2T(j)(3)(i) as acquiring its proportionate share of the transferred ownership interest.

(14) *Small redemption exception*—(i) *In general.* Section 1.382–2T(j)(2)(iii)(C) does not apply to a small redemption (as defined in paragraph (j)(14)(ii) of this section), except to the extent that the total amount of stock redeemed in that redemption and all other small redemptions previously made in the same taxable year (determined in each case on redemption) exceeds the small redemption limitation. This paragraph (j)(14) does not apply to a redemption of stock that, by itself, exceeds the small redemption limitation.

(ii) *Small redemption defined. Small redemption* means a redemption of public shareholders by the loss corporation of an amount of stock not exceeding the small redemption limitation.

(iii) *Small redemption limitation*—(A) *In general.* For each taxable year, the loss corporation may, at its option, apply this paragraph (j)(14)—

(*1*) On a corporation-wide basis, in which case the small redemption

limitation is 10 percent of the total value of the loss corporation's stock outstanding at the beginning of the taxable year (excluding the value of stock described in section 1504(a)(4)); or

(*2*) On a class-by-class basis, in which case the small redemption limitation is 10 percent of the number of shares of the class redeemed that are outstanding at the beginning of the taxable year.

(B) *Class of stock defined.* For purposes of this paragraph (j)(14)(iii), a class of stock includes all stock with the same material terms.

(C) *Adjustments for stock splits and similar transactions.* Appropriate adjustments to the number of shares of a class outstanding at the beginning of a taxable year must be made to take into account any stock split, reverse stock split, stock dividend to which section 305(a) applies, recapitalization, or similar transaction occurring during the taxable year.

(D) *Exception.* The loss corporation may not apply this paragraph (j)(14)(iii) on a class-by-class basis if, during the taxable year, more than one class of stock is redeemed in a single redemption (or in two or more redemptions that are treated as a single redemption under paragraph (j)(14)(v) of this section).

(E) *Short taxable years.* In the case of a taxable year that is less than 365 days, the small redemption limitation is reduced by multiplying it by a fraction, the numerator of which is the number of days in the taxable year, and the denominator of which is 365.

(iv) *Proportionate redemption of exempted stock*—(A) *In general.* Each direct public group that exists immediately before a redemption to which this paragraph (j)(14) applies is treated as having been redeemed of its proportionate share of the amount of stock exempted from the application of § 1.382–2T(j)(2)(iii)(C) under this paragraph (j)(14).

(B) *Actual knowledge of greater redemption.* Under the last sentence of § 1.382–2T(k)(2), the loss corporation may treat direct public groups existing immediately before a redemption to which this paragraph (j)(14) applies as having been redeemed of more stock than the amount determined under paragraph (j)(14)(iv)(A) of this section, but only if the loss corporation actually knows that the amount redeemed from those groups in the redemption exceeds the amount so determined.

(v) *Certain related redemptions.* For purposes of this paragraph (j)(14), two or more redemptions (including redemptions of stock by first tier or higher tier entities) are treated as a single redemption if—

(A) The redemptions occur at approximately the same time pursuant to the same plan or arrangement; or

(B) A principal purpose of redeeming the stock in separate redemptions rather than in a single redemption is to minimize or avoid an owner shift under the rules of this paragraph (j)(14).

(vi) *Certain non-stock ownership interests.* As the context may require, a non-stock ownership interest in an entity other than a corporation is treated as stock for purposes of this paragraph (j)(14).

(15) *Exception for first tier and higher tier entities*—(i) *In general.* The segregation rules of § 1.382–2T(j)(3)(iii) will not apply if, after taking into account the results of such transaction and all other transactions occurring on that date—

(A) The first tier or higher tier entity owns 10 percent or less (by value) of all the outstanding stock (without regard to § 1.382–2(a)(3)) of the loss corporation; and

(B) The entity's direct or indirect investment in the loss corporation does not exceed 25 percent of the entity's gross assets. For this purpose, the entity's cash and cash items within the meaning of section 382(h)(3)(B)(ii) are not taken into account.

(ii) *Special Rules.* If paragraph (j)(15)(i) applies to combine one or more public groups, then—

(A) the amount of increase in the percentage of stock ownership of the continuing public group will be the sum of its increase and a proportionate amount of any increase by any public group that is combined with the continuing public group (the former public group); and

(B) the continuing public group's lowest percentage ownership will be the sum of its lowest percentage ownership and a proportionate amount of the former public group's lowest percentage ownership.

(iii) *Ownership of the loss corporation.* In making the determination under paragraph (j)(15)(i)(A) of this section—

(A) The rules of § 1.382–2T(h)(2) will not apply;

(B) The entity will be treated as owning the loss corporation stock that it actually owns, and any loss corporation stock if that stock would be attributed to the entity under section 318(a) (without regard to paragraph (4) thereof unless an option is treated as exercised under § 1.382–4(d)); and

(C) The operating rules of paragraph (j)(15)(iv) of this section will apply.

(iv) *Operating Rules.* Subject to the principles of § 1.382–2T(k)(4), a loss corporation may establish the ownership limitation of paragraph (j)(15)(i)(A) of this section through either—

(A) Actual knowledge; or

(B) Absent actual knowledge to the contrary, the presumptions regarding stock ownership in § 1.382–2T(k)(1).

(16) *Examples.* * * *

* * * * *

*Example 5. Secondary transfer exception to segregation rules—no new public group.* (i) *Facts.* L is owned 60 percent by one public group (Public $L_1$) and 40 percent by another public group (Public $L_2$). On July 1, 2010, A acquires 10 percent of L's stock over a public stock exchange. On December 31, 2010, A sells all of his L stock over a public stock exchange. No individual or entity acquires as much as five percent of L's stock as a result of A's disposition of his L stock. On January 3, 2011, B acquires 10 percent of L's stock over a public stock exchange. On June 30, 2011, B sells all of her L stock over a public stock exchange. No individual or entity acquires as much as five percent of L's stock as a result of B's disposition of her L stock.

(ii) *Analysis.* The dispositions of the L stock by A and B are not transactions that cause the segregation of L's direct public groups that exist immediately before the transaction (Public $L_1$ and Public $L_2$). When A and B sell their shares to public shareholders over the public stock exchange, the shares are treated as being reacquired by Public $L_1$ and Public $L_2$. As a result, Public $L_1$'s ownership interest is treated as increasing from 54 percent to 60 percent during the testing period, and Public $L_2$'s ownership interest is treated as increasing from 36 percent to 40 percent during the testing period.

*Example 6. Secondary transfer exception—first tier entity.* (i) *Facts.* L has a single class of common stock outstanding that is owned 60 percent by a direct public group (Public L) and 40 percent by P. P is owned 20 percent by Individual A and 80 percent by a direct public group (Public P). On October 6, 2013, A sells 50 percent of his interest in P to B, an individual who is a member of Public P.

(ii) *Analysis.* P is an entity that owns five percent or more of L. A is a 5-percent owner of P that is a 5-percent shareholder of L. Because A's sale of the P stock is to a member of Public P, the disposition of the P stock by A is not a transaction that causes the segregation of P's direct public group that exists immediately before the transaction (Public P). See paragraph (j)(13) of this section. When A sells his shares to B, the shares are treated as being acquired by Public P. As a result, Public P's ownership interest in L is treated as increasing from 32 percent to 36 percent during the testing period.

*Example 7. Small redemption exception.* (i) *Facts.* L is a calendar year taxpayer. On January 1, 2010, L has 1,060 shares of a single class of common stock outstanding, all of which are owned by a single direct public group (Public L). On July 1, 2010, L acquires 60 shares of its stock for cash. On December 31, 2010, in an unrelated redemption, L acquires 90 more shares of its stock for cash. Following each redemption, L's stock is

owned entirely by public shareholders. No other changes in the ownership of L's stock occur prior to December 31, 2010.

(ii) *Analysis.* The July redemption is a small redemption because the number of shares redeemed (60) does not exceed 106, the small redemption limitation (10 percent of the number of common shares outstanding on January 1, 2010). Under paragraph (j)(14) of this section, the segregation rules of § 1.382–2T(j)(2)(iii)(C) do not apply to the July redemption. Under paragraph (j)(14)(iv) of this section, Public L is treated as having all 60 shares redeemed.

(iii) The December redemption is a small redemption because the number of shares redeemed (90) does not exceed 106, the small redemption limitation (10 percent of the number of common shares outstanding on January 1, 2010). However, under paragraph (j)(14)(i) of this section, only 46 of the 90 shares redeemed are exempted from the segregation rules of § 1.382–2T(j)(2)(iii)(C) because the total number of shares of common stock redeemed in the July and December redemptions exceeds 106, the small redemption limitation, by 44. Accordingly, under paragraph (j)(14)(iv) of this section, Public L is treated as having 46 shares redeemed in the December redemption. Section 1.382–2T(j)(2)(iii)(C) applies to the remaining 44 shares redeemed. Accordingly, Public L is segregated into two different public groups immediately before the transaction (and thereafter) so that the redeemed interests (Public RL) are treated as part of a public group that is separate from the ownership interests that are not redeemed (Public CL). Therefore, as a result of the December redemption, Public CL's interest in L increases by 4.4 percentage points (from 95.6 percent (956/1,000) to 100 percent (910/910)) on the December 31, 2010 testing date. For purposes of determining whether an ownership change occurs on any subsequent testing date having a testing period that includes such redemption, Public CL is treated as a 5-percent shareholder whose percentage ownership interests in L increased by 4.4 percentage points as a result of the redemption.

*Example 8. Segregation rules inapplicable—proportionate amount.* (i) *Facts.* $P_1$ is a corporation that owns 8 percent of the stock of L. The remaining L stock (92 percent) is owned by Public L. $P_1$ is entirely owned by Public $P_1$. Excluding cash and cash items within the meaning of section 382(h)(3)(B)(ii), $P_1$'s investment in L represents 11 percent of $P_1$'s gross assets. $P_2$ is a corporation owned 90 percent by individual A and 10 percent by a public group (Public $P_2$). On May 22, 2013, $P_1$ merges into $P_2$ with the shareholders of $P_1$ receiving an amount of $P_2$ stock equal to 25 percent of the value of $P_2$ immediately after the reorganization. Following the merger, $P_2$'s investment in L represents 6 percent of the combined gross assets of $P_1$ and $P_2$ (excluding cash and cash items). L was owned 92 percent by Public L and 8 percent by $P_1$ throughout the testing period ending on the date of the merger.

(ii) *Analysis.* Assuming L can establish that $P_2$ owns 10 percent or less (by value) of L on May 22, 2013 pursuant to the operating rules of paragraph (j)(15)(iv) of this section, the segregation rules of § 1.382–2T(j)(3)(iii) will not apply to segregate $P_1$'s direct public group (Public $P_1$) immediately before the merger from $P_2$'s direct public group (Public $P_2$). Thus, following the merger, $P_2$ is owned 67.5 percent (90% × 75%) by A and 32.5 percent (25% + (10% × 75%)) by Public $P_2$. Pursuant to paragraph (j)(15)(ii)(B) of this section, Public $P_2$'s lowest percentage of ownership is the sum of its lowest percentage of ownership (zero) and a proportionate amount of former Public $P_1$'s lowest ownership percentage of L of 2.6 percent (32.5% × 8%). $P_2$ will be treated as having one public group whose ownership interest in L was 2.6 percent before the merger and remains 2.6 percent after the merger. Because Public $P_2$ owns less than 5 percent of L, Public $P_2$ is treated as part of Public L. See § 1.382–2T(j)(1)(iv). Thus, pursuant to paragraph (j)(15)(ii)(B) of this section, Public L's lowest ownership percentage of L during the testing period is 94.6 percent.

*Example 9. Segregation rules inapplicable—prior increase in ownership by former public group during testing period.* (i) *Facts.* The facts are the same as *Example 8,* except that $P_1$ acquired its 8 percent interest in L during the testing period that includes the merger.

(ii) *Analysis.* Pursuant to the rules of paragraph (j)(15)(ii)(A) of this section, the amount of increase in the percentage of stock ownership by Public $P_2$ is the sum of its increase and any increase by a former public group (Public $P_1$). Accordingly, Public $P_2$, the continuing public group, is treated as having increased its ownership interest by 2.6 percent, and Public L is treated as increasing its ownership interest by 2.6 percent.

*Example 10. Ownership limitation based upon fair market value.* (i) *Facts.* L has two classes of stock outstanding, common stock and preferred stock. The preferred stock is stock within the meaning of § 1.382–2(a)(3). A direct public group (Public L) owns all of the common stock of L. P purchased 100 percent of the preferred stock of L at a time when the preferred stock represented 9 percent of the value of all the outstanding stock of L. The common stock owned by Public L represents the remaining 91 percent of the value of the stock of L. P has one class of common stock outstanding, all of which is owned by a direct public group (Public P). On October 7, 2013, P redeems 30 percent of its single outstanding class of common stock. Due to a decline in the relative value of the common stock of L, the preferred stock of L represents 40 percent of the value of all the outstanding stock of L on the date of the redemption.

(ii) *Analysis.* The rules of paragraph (j)(15) of this section do not apply to the redemption because P owns more than 10 percent of L (by value) on that date.

*Example 11. Ownership limitation—fair market value includes preferred stock.* The facts are the same as in *Example 10,* except that the preferred stock is not stock within the meaning of § 1.382–2(a)(3). The results are the same as in *Example 10.*

*Example 12. Ownership limitation—application of attribution rules.* (i) *Facts.* Individual A owns all the outstanding stock of X. A also owns preferred stock in Y that is not stock within the meaning § 1.382–2(a)(3), which represents 50 percent of the value of Y. All the Y common stock is owned by public owners. Each of X and Y own 6 percent of the single class of L stock outstanding. On October 6, 2013, Y redeems 15 percent of its common stock.

(ii) *Analysis.* In determining the ownership limitation of this paragraph, the attribution rules of section 318(a) apply. Pursuant to section 318(a)(2), A is treated as owning the L stock owned by X. Pursuant to section 318(a)(3), Y is treated as owning the L stock that A indirectly owns. Because Y's ownership of L exceeds the ownership limitation, the rules of paragraph (j)(15) of this section do not apply.

(17) *Effective/applicability date.* This paragraph (j) generally applies to issuances or deemed issuances of stock in taxable years beginning on or after November 4, 1992. However, paragraphs (j)(13) through (j)(15) and Examples 5 through 12 of paragraph (j)(16) apply to testing dates occurring on or after the date these regulations are published as final regulations in the **Federal Register**. See § 1.382–3(j)(14)(ii) and (iii), as contained in 26 CFR part 1 revised as of April 1, 1994, for the application of paragraph (j)(10) to stock issued on the exercise of certain options exercised on or after November 4, 1992 and for an election to apply paragraphs (j)(1) through (12) retroactively to certain issuances and deemed issuances of stock occurring in taxable years prior to November 4, 1992.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2011–30290 Filed 11–22–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 602

**[REG–146537–06]**

**RIN 1545–BG08**

## Income of Foreign Governments and International Organizations; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed regulations.

**SUMMARY:** This document contains corrections to a notice of proposed regulations that were published in the **Federal Register** on Thursday, November 3, 2011. These regulations provide guidance relating to the taxation of the income of foreign governments

from investments in the United States. The regulations affect foreign governments that derive income from sources within the United States.

**FOR FURTHER INFORMATION CONTACT:** David A. Juster, (202) 622–3850 (not toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

The notice of proposed rulemaking (REG–146537–06) that is the subject of this correction is under sections 892 and 602 of the Internal Revenue Code.

## Need for Correction

As published on November 3, 2011 (76 FR 68119), the notice of proposed rulemaking (REG–146537–06) contains errors that may prove to be misleading and are in need of clarification.

## Correction for Publication

Accordingly, the notice of proposed rulemaking (REG–146537–06) that was the subject of FR Doc. 2011–28531 is corrected as follows:

1. On page 68119, column 2, in the preamble under the paragraph heading ''Paperwork Reduction Act'', line 17 from the top of the column, the language ''the collection of information should be'' is corrected to read ''the collections of information should be''.

2. On page 68119, column 2, in the preamble under the paragraph heading ''Paperwork Reduction Act'', the first full paragraph in the column, lines 1 and 2, the language ''Whether the proposed collection of information is necessary for the proper'' is corrected to read ''Whether the proposed collections of information are necessary for the proper''.

3. On page 68119, column 2, in the preamble under the paragraph heading ''Paperwork Reduction Act'', second paragraph in the column, line 2, the language ''associate with the proposed collection'' is corrected to read ''associate with the proposed collections''.

4. On page 68119, column 2, in the preamble under the paragraph heading ''Paperwork Reduction Act'', sixth paragraph in the column, lines 1 and 2, the language ''The collection of information in this proposed regulation is in §§ 1.892–'' is corrected to read ''The collections of information in this proposed regulations are in §§ 1.892–''.

5. On page 68119, column 2, in the preamble under the paragraph heading ''Paperwork Reduction Act'', sixth paragraph in the column, lines 6 and 7, the language ''tax under section 892. The collection of information is voluntary to obtain a'' is corrected to read ''tax under section 892. The collections of information are voluntary to obtain a''.

6. On page 68119, column 3, in the preamble under the paragraph heading ''Background'', fifth line from the bottom of the paragraph, the language ''referenced notice of proposed'' is corrected to read ''reference notice of proposed''.

7. On page 68121, column 1, in the preamble under the paragraph heading ''Definition of Commercial Activity'', third line from the bottom of the last paragraph, the language ''proposed regulations revised § 1.892–'' is corrected to read ''proposed regulations revise § 1.892–''.

8. On page 68122, column 1, Paragraph 1. The authority citation, line 2, the language ''for parts 1 and 601 continues to read in'' is corrected to read ''for part 1 continues to read in''.

**§ 1.892–5 [Corrected]**

9. On page 68122, column 3, § 1.892–5(a)(1), line 2, the paragraph heading (a)(1) the language ''definition of term ''controlled'' is corrected to read ''definition of the term ''controlled''.

10. On page 68123, column 3, § 1.892–5(d)(5)(i), line 3, the language ''(d)(5)(ii) or (d)(5)(iii) of this section, the'' is corrected to read ''(d)(5)(ii) or paragraph (d)(5)(iii) of this section, the''.

**Diane O. Williams,**

*Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division.*

[FR Doc. 2011–30171 Filed 11–22–11; 8:45 am]

**BILLING CODE 4830–01–P**

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# NATIONAL LABOR RELATIONS BOARD

## 29 CFR Parts 101, 102, 103

**RIN 3142–AAO8**

## Representation Case Procedures

**AGENCY:** National Labor Relations Board.

**ACTION:** Proposed rule; notice of meeting.

**SUMMARY:** The National Labor Relations Board (NLRB or Board) invites interested parties to attend an open meeting of the Board on November 30, 2011, at 2:30 p.m. The meeting will be held in the Board Agenda Room (Room 11820), National Labor Relations Board, 1099 14th Street NW., Washington, DC 20570. The purpose of the meeting will be to vote on how to proceed in this rulemaking proceeding. No public testimony or comments will be received.

**DATES:** The meeting will be held on Wednesday, November 30, 2011, beginning at 2:30 p.m. Due to time and seating considerations, persons desiring to attend the meeting must notify the NLRB staff, no later than 4 p.m. on Monday, November 28, 2011.

**ADDRESSES:** The public meeting will be held in the Board Agenda Room (Room 11820), National Labor Relations Board, 1099 14th Street NW., Washington, DC 20570. Requests to attend the meeting must be addressed to Mary Meyers, Administrative Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, NW., Suite 11100, Washington, DC 20570. Requests may also be made electronically to *publicmeeting@nlrb.gov.* All communications must include the following words on the Subject Line—''REQUEST TO ATTEND PUBLIC MEETING REGARDING RIN 3142–AA08.''

**FOR FURTHER INFORMATION CONTACT:** Mary Meyers, Administrative Assistant to the Chairman, National Labor Relations Board, 1099 14th Street NW., Suite 11100, Washington, DC 20570; *Phone:* (202) 273–1700; *Email:publicmeeting@nlrb.gov.*

**SUPPLEMENTARY INFORMATION:** The National Labor Relations Board will hold an open public meeting on Wednesday, November 30, 2011, at 2:30 p.m. The purpose of the meeting will be to vote on how to proceed in this rulemaking proceeding. No public testimony or comments will be received.

On June 22, 2011, the NLRB published a Notice of Proposed Rulemaking (NPRM) (76 FR 36812), proposing to amend its rules and regulations governing the filing and processing of petitions relating to the representation of employees for purposes of collective bargaining with their employer. In addition to the comment procedure outlined in the NPRM, the NLRB provided another opportunity for interested persons to provide their views to the Board on this important matter at an open public meeting. This public meeting was held on July 18–19, 2011, with 66 witnesses testifying before the Board. Thereafter, the deadline for filing initial public comments was August 22, 2011, and the deadline for filing reply comments was September 6, 2011. Over 65,000 written comments have been received and analyzed. The Board must now decide how to proceed in this matter.

Persons desiring to attend the meeting must notify the NLRB staff, in writing, at the above listed physical or email address, by the deadline posted. Attendees are reminded to bring a photo identification card with them to the public meeting in order to gain

admittance to the building. Due to space limitations in the meeting room, an overflow room has been established in the Margaret A. Browning Hearing Room (Room 11000), where persons will be able to observe the meeting by video conference. The meeting will also be available for viewing on the Internet.

*Agenda:* The meeting will be limited to issues related to the proposed amendments to the Board's rules governing representation-case procedures. A copy of the NPRM may also be obtained from the NLRB's Web site at: *http://www.nlrb.gov/nprm.*

Dated: November 18, 2011.

**Mark Gaston Pearce,**

*Chairman.*

[FR Doc. 2011–30280 Filed 11–22–11; 8:45 am]

**BILLING CODE 7545–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0968]**

**RIN 1625–AA00**

## Safety Zone; Marco Island Marriott Charity Fireworks Display, Gulf of Mexico, Marco Island, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the waters of the Gulf of Mexico in the vicinity of Marco Island Marriott Beach Resort in Marco Island, Florida during the Marco Island Marriott Charity Fireworks Display on Friday, February 17, 2012. The safety zone is necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 17, 2011. Requests for public meetings must be received by the Coast Guard on or before November 30, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG–2011–0968 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07-SMB-Tampa-WWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

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

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0968), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0968'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0968'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### Privacy Act

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

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before November 30, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold

one at a time and place announced by a later notice in the **Federal Register.**

**Basis and Purpose**

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

The purpose of the proposed rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

**Discussion of Proposed Rule**

On Friday, February 17, 2012, the Marco Island Marriott Charity Fireworks Display is scheduled to take place in Marco Island, Florida. The fireworks will be launched from a vessel located approximately 330 yards west of Marco Island on the Gulf of Mexico. The fireworks will explode over the Gulf of Mexico. The fireworks display is scheduled to commence at approximately 8:30 p.m.

The proposed rule would establish a temporary safety zone that encompasses certain waters of the Gulf of Mexico in the vicinity of Marco Island Marriott Beach Resort in Marco Island, Florida. The safety zone would be enforced from 8 p.m. until 10 p.m. on February 17, 2012. Enforcement of the safety zone would begin 30 minutes prior to the scheduled commencement of the fireworks display at approximately 8:30 p.m., to ensure the safety zone is clear of persons and vessels.

Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization. The Coast Guard would provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

**Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

**Regulatory Planning and Review**

Executive Orders 13563, Regulatory Planning and Review, and 12866, Improving Regulation and Regulatory Review, 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 proposed rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this proposed rule under Executive Order 12866.

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone would be enforced for only two hours; (2) vessel traffic in the area would be minimal during the enforcement period; (3) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port St. Petersburg or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (4) persons and vessels would still be able to enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port St. Petersburg or a designated representative; and (5) the Coast Guard would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Gulf of Mexico encompassed within the safety zone from 8 p.m. until 10 p.m. on February 17, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Science Technician First Class Nolan L. Ammons, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *D07-SMB-Tampa-WWM@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**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 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this proposed 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 because it is not a ''significant regulatory action'' under Executive Order 12866 and 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, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone, as described in paragraph 34(g) of the Instruction, that will be enforced for two hours. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a temporary § 165.T07–0968 to read as follows:

**§ 165.T07–0968 Safety Zone; Marco Island Marriott Charity Fireworks Display, Gulf of Mexico, Marco Island, FL.**

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the Gulf of Mexico within a 330 yard radius of position 25°55′40″ N, 81°44′03″ W. All coordinates are North American Datum 1983.

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

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

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

(d) *Effective Date.* This rule is effective from 8 p.m. until 10 p.m. on February 17, 2012.

Dated: November 10, 2011.

**S.L. Dickinson,**

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

[FR Doc. 2011–30189 Filed 11–22–11; 8:45 am]

BILLING CODE 9110–04–P

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**37 CFR Part 3**

**[Docket No. PTO–P–2011–0077]**

## Request for Comments on Eliciting More Complete Patent Assignment Information

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Request for comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is considering several changes in practice designed to encourage a more complete record at the USPTO of patent assignments. The USPTO invites the public to provide comments on methods the USPTO can employ to collect more timely and accurate patent assignment information both during prosecution and after issuance.

**DATES:** To ensure full consideration, written comments should be received no later than January 23, 2012.

**ADDRESSES:** Written comments may be submitted, identified as ''Eliciting More Complete Patent Assignment Information,'' by any of the following methods:

- *Electronic Mail: saurabh.vishnubhakat@uspto.gov.*
- *Postal Mail:* Saurabh Vishnubhakat, Attorney Advisor, Office of Chief Economist, United States Patent and Trademark Office, Mail Stop External Affairs, P.O. Box 1450, Alexandria, VA 22313–1450.

The written comments will be available for public inspection at the Office of the Chief Economist, located in the Madison West Building, Tenth Floor, 600 Dulany Street, Alexandria, Virginia 22314. In addition, the written comments from the public will also be available via the USPTO Internet Web site (address: *http://www.uspto.gov*).

Because comments will be made available for public inspection, information that is not desired to be made public, such as a phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Saurabh Vishnubhakat by electronic mail at *saurabh.vishnubhakat@uspto.gov* or by telephone at (571) 272–3427.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*Collecting Current Assignment Information*

The USPTO is considering changes aimed at building a more complete record of assigned applications and patents. It is increasingly clear that applications, patents and the completeness of the patent record play an essential role in the markets of innovation.

Intangible assets now comprise over 50% of the business outputs of U.S. industry, and intellectual property rights (IPRs) provide a platform for intangibles to be transacted so that they can provide profits for innovators and move technologies to their most efficient uses in the economy.

IPRs are often cleared by their manufacturers or distributers in order for new products to be legally sold. In such cases, IPR clearance is often made more difficult and time-consuming, legally risky, and expensive because current assignment information on patents and applications is not available. An incomplete assignment record thus presents a significant barrier to market efficiency.

Markets operate most efficiently when buyers and sellers can find one another. Yet in our current system, fragmented ownership in the patent rights covering complex products leads to potential buyers facing difficulty finding sellers, and potential innovators not understanding the nature of the marketplace they are considering entering.

To address the need for accurate assignment data for pending patent applications and issued patents, the USPTO is interested in providing more complete patent assignment data to the public, in accordance with the Office's duty under 35 U.S.C. 2(a)(2) of ''disseminating to the public information with respect to patents.''

A more complete patent assignment record would produce a number of benefits. The public would have a more comprehensive understanding of what patent rights being issued by the United States are being held and maintained by various entities. The financial markets would have more complete information about the valuable assets being generated and held by companies. Patenting inventors and manufacturers would better understand the competitive environment in which they are operating, allowing them to better allocate their own research and development resources, and more efficiently obtain licenses and accurately value patent portfolios and patent estates that they may seek to acquire.

*Changes Under Consideration*

To elicit more complete patent assignment data, the USPTO is considering changes to various provisions of 37 CFR to require that any change in the identity of the assignee or assignees (i.e., real party in interest) be made known to the Office within each communication to the Office by the representative of the applicant during patent prosecution.

These potential changes include:

(1) Amending 37 CFR to require that any assignee or assignees be disclosed at the time of application filing;

(2) Amending 37 CFR 3.81 to require that the application issue in the name of the assignee or assignees as of the date of payment of the issue fee;

(3) Amending 37 CFR 1.215(b) to require the identification of assignment changes after filing date for inclusion on the patent application publication (PGPub);

(4) Amending 37 CFR 1.27(g) to require timely identification of any new ownership rights that cause the application or issued patent to gain or lose entitlement to small entity status; and

(5) Amending 37 CFR to provide for discounted maintenance fees in return for verification or update of assignee information either when a maintenance fee is paid or within a limited time period from the date of maintenance fee payment.

With regard to change (2) above, 37 CFR 3.81 currently states that the ''application may issue in the name of the assignee * * * where a request for such issuance is submitted with payment of the issue fee.'' The ''request for such issuance'' (in the name of the assignee) is made by entering the name and residence of the assignee in box 3 of the issue fee transmittal form (form 85B). The assignee name entered in box 3 of form 85B is printed on the patent and included in USPTO's searchable U.S. Patent database. The USPTO is considering amending 37 CFR 3.81 to no longer predicate issuance in the name of the assignee on whether or not the applicant decides to make a ''request for such issuance.''

Rather, the USPTO is considering amending 37 CFR 3.81 to require that the assignee be identified at the time of payment of the issue fee. Correspondingly, Box 3 of Form 85B may be changed to show that the assignee name must be entered. This could help improve the accuracy of assignment searches made in the U.S. patent database. As amended by the

AIA, 35 U.S.C. 118 similarly requires that applicants update assignee information at the time of allowance:

> [I]f the Director grants a patent on an application filed under this section by a person other than the inventor, the patent shall be granted to the real party in interest and upon such notice to the inventor as the Director considers to be sufficient.

With regard to change (3), 37 CFR 1.215(b) currently sets forth that assignee information must appear on the application transmittal sheet (*e.g.,* form PTO/SB/05) or the application data sheet (*e.g.,* form PTO/SB/14) if applicant ''wants'' the PGPub to contain assignment information. In order to promote more complete assignee data in the USPTO's searchable PGPub database, the language of § 1.215(b) could be changed to state that applicant ''must'' provide assignee information, rather than provide assignee information only if applicant ''wants'' to do so. Additionally, the office could modify forms PTO/SB/05 and PTO/SB/14 to better indicate that the assignee information must be entered.

With regard to change (4), the title of 37 CFR 1.27(g)(2) is ''Notification of loss of entitlement to small entity status is required when issue and maintenance fees are due.'' However, current § 1.27(g)(2) does not require identification of the new assignee that caused the application or issued patent to lose entitlement to small entity status, or in the alternative, a statement that the current assignee is no longer eligible for small entity status for other reasons (*e.g.,* a license to a business that does not qualify as a small entity). The USPTO is considering amending § 1.27(g)(2) to require such identification or statement.

With regard to change (5), the USPTO is considering implementing its new fee setting authority, under § 10 of the AIA, in order to provide for discounted maintenance fees in return for verification or update of assignee information either when a maintenance fee is paid or within a limited time period from the date of maintenance fee payment.

The patent assignment recordation statute, 35 U.S.C. 261, provides that:

> An assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

Failure to record a patent assignment voids the assignment against a subsequent purchaser or mortgagee of the patent. Where there is no subsequent purchaser or mortgagee, the statute has no effect other than to protect against potential future subsequent purchasers or mortgagees. Moreover, even where the statute may have effect, owners may still have incentives not to record. Thus, the absence of an explicit, affirmative recordation requirement may result in an incomplete assignment record.

If the USPTO pursues this change, the information verifying or updating assignee information would likely be required to come from a party under 37 CFR 1.33(b). In addition, any new assignment documents would likely be required to be recorded in order to claim the discount. Providing for discounts within a limited time period after a maintenance fee payment would permit a third party fee submitter to pay the maintenance fee, followed by the party under 37 CFR 1.33(b) requesting the discount in the form of a partial refund.

Administratively, the USPTO would have to decide whether the discount should go to the 37 CFR 1.33(b) party, or to the third party fee submitter in this situation. The USPTO is aware that a significant portion of maintenance fees are filed by ''bulk filers'' which are companies whose business with the USPTO is to pay maintenance fees in bulk. Since the bulk filers are customarily paid up front for whatever fee amount is to be paid to the USPTO (discounted or undiscounted), there should be no loss to bulk filers if discounts were sent directly to the 37 CFR 1.33(b) party. For the discount to be obtained, the request for the discount would ideally be accompanied by a verification of current assignment information, or identification of the new assignee together with the corresponding assignment documents for recordation.

## II. Request for Comments

Comments on one or more of the following questions would be helpful to the USPTO:

(1) Is there any reason that the mandatory disclosure of any assignee or assignees should not take place at the time of application filing?

(2) Would it be in the public interest for the USPTO to obtain from applicants updated identification of the assignee at the time of allowance, e.g. in response to the Notice of Allowance? Are there limitations on the USPTO's rights and powers to require the reporting of such information?

(3) Would it be in the public interest for the USPTO to obtain from applicants updated identification of the assignee during prosecution of the application? Are there limitations on the USPTO's rights and powers to require the reporting of such information? Should the USPTO consider requiring the identification of assignment changes after filing date for inclusion on the patent application publication (PGPub)? At what time should changes be recorded relative to the assignment, and what are the appropriate consequences of non-compliance?

(4) Would it be in the public interest for the USPTO to obtain from applicants updated identification of the assignee after issue of the patent? Are there limitations on the USPTO's rights and powers to require the reporting of such information? At what time should such identification be made to the Office relative to a change? Should the USPTO consider requiring the identification of assignment changes during the maintenance period of the patent right, *i.e.,* after grant, but prior to patent expiration? What are the appropriate consequences of non-compliance?

(5) To accomplish adequate and timely recording, are changes to Agency regulations necessary? What are the most effective and appropriate means for the USPTO to provide the public with a timely and accurate record of the assignment of patent rights and the assignee?

(6) Would it help the USPTO's goal of collecting more updated assignment information if 37 CFR 1.27(g)(2) were amended to require identification of any new ownership rights that caused the application or issued patent to lose entitlement to small entity status?

(7) Given the passage of the America Invents Act, is it proper for the Office to provide for financial incentives for disclosure of assignment information by way of discounts in fee payments? For example, would it be more likely for patentees to update assignment information and record assignment documents on in-force patents if a maintenance-fee discount were available in return? What are the appropriate consequences for failure to provide accurate information when accepting such a discount?

(8) In order to provide a more complete record for transactional purposes, what changes do you recommend that USPTO make in its requirements or incentives relating to the disclosure of assignment information during the patent application process and for issued in-force patents?

Dated: November 16, 2011.

**David J. Kappos,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2011–30140 Filed 11–22–11; 8:45 am]

**BILLING CODE 3510–16–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2011–0819; FRL–9495–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Maryland; Baltimore Nonattainment Area Determinations of Attainment of the 1997 Annual Fine Particulate Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to make two determinations regarding the Baltimore fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the Baltimore Area'' or ''Area''). First, EPA is proposing to determine that the Area has attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). This proposed clean data determination is based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS and data available to date for 2011 in EPA's Air Quality System (AQS) database that show the Area continues to attain. If EPA finalizes this proposed clean data determination, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to the attainment of the standard shall be suspended for so long as the Area continues to attain the annual $PM_{2.5}$ NAAQS. EPA is also proposing to determine, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. In addition, EPA is withdrawing the July 31, 2009 (74 FR 38161) proposed clean data determination for the Baltimore Area. These actions are being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before December 23, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0819 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: Fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0819, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2011–0819. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

This supplementary information section is arranged as follows:

I. What actions are EPA proposing?
II. What is the background of these actions?
III. What is EPA's analysis of the relevant air quality data?
IV. What are the effects of these actions?
V. Statutory and Executive Order Reviews

### I. What actions are EPA proposing?

In accordance with section 179(c)(1) of the CAA, 42 U.S.C. 7509(c)(1), and 40 CFR 51.1004(c), EPA is proposing to determine that the Baltimore Area has attained the 1997 annual $PM_{2.5}$ NAAQS. The proposal is based upon quality-assured and certified ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods that show that the Area attained the 1997 annual $PM_{2.5}$ NAAQS, and data available to date for 2011 that shows the Area continues to attain. EPA is also proposing to determine, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that the Baltimore Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. Finally, EPA is withdrawing the previous clean data proposal for the Baltimore Area published on July 31, 2009 (74 FR 38161) since that action was never finalized and more current data is now available.

### II. What is the background for these actions?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations (hereafter referred to as ''the annual $PM_{2.5}$ NAAQS'' or ''the annual standard''). At that time, EPA also established a 24-hour standard of 65 $\mu g/m^{3.}$ (Today's action does not address the 24-hour

standard.). See, 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the annual $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Baltimore Area was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS during this designations process. See, 40 CFR 81.321 (Maryland).

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 μg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (the ''2006 24-hour standard''). On November 13, 2009, EPA designated the Baltimore Area as attainment for the 2006 24-hour standard. In that action, EPA also clarified the designations for the $PM_{2.5}$ NAAQS promulgated in 1997 stating that the Baltimore Area was attainment for the 1997 24-hour standard (74 FR 58688). Today's action, however, does not address either the 1997 or the 2006 24-hour standard.

In response to legal challenges of the annual standards promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this standard to EPA for further consideration. See, *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standard would also indicate attainment of the remanded 2006 annual standard.

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which EPA provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ standard. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the standard, as discussed later.

On July 31, 2009 (74 FR 38161), EPA proposed, but never finalized a clean data determination for the Baltimore Area. See, Docket ID No. EPA–R03–OAR–2009–0199. EPA is withdrawing this previous clean data proposal for the Baltimore Area.

## III. What is EPA's analysis of the relevant air quality data?

Today's proposed rulemaking determines that the Baltimore Area has clean data for the 1997 annual $PM_{2.5}$ NAAQS, based on the most recent three years of quality-assured data and data available to date for 2011 and that the Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. Under EPA regulations at 40 CFR 50.7, the 1997 annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 μg/m³ at all relevant monitoring sites in the subject area.

EPA has determined that the $PM_{2.5}$ monitoring network for the Baltimore Area is adequate. First, the number of monitors in the Area meets the minimum regulatory requirements given in 40 CFR part 58, appendix D. Second, the monitoring is in accordance with the monitoring plans that have been reviewed and approved by EPA.

Table 1 shows the design values (i.e., the 3-year average of annual mean $PM_{2.5}$ concentrations) for the annual $PM_{2.5}$ NAAQS for the Baltimore Area monitors for the years 2008–2010. All data considered have been quality-assured, certified, and recorded in AQS. Table 2 shows the design values (i.e., the 3-year average of annual mean $PM_{2.5}$ concentrations) for the annual $PM_{2.5}$ NAAQS for the Baltimore Area monitors for the years 2007–2009. All data considered have been quality-assured, certified, and recorded in AQS. EPA's review of these data indicates that the Baltimore Area has met the annual $PM_{2.5}$ NAAQS and that the Area attained the $PM_{2.5}$ standard by its attainment date of April 5, 2010.

TABLE 1—BALTIMORE AREA 2008–2010 $PM_{2.5}$ DATA (IN μg/m³)

| City | Site ID | 2008 Annual mean | 2009 Annual mean | 2010 Annual mean | 2008–2010 Design value |
|---|---|---|---|---|---|
| Glen Burnie | 24–003–1003 | 12.6 | 11.1 | 11.0 | 11.6 |
| Padonia | 24–005–1007 | 11.9 | 10.2 | 10.4 | 10.8 |
| Essex | 24–005–3001 | 12.6 | 11.0 | 11.6 | 11.7 |
| Edgewood | 24–025–1001 | 11.3 | 9.6 | 9.5 | 10.1 |
| Baltimore | 24–510–0006 | 12.2 | 10.1 | 10.1 | 10.8 |
| Baltimore | 24–510–0007 | 12.4 | 10.3 | 10.3 | 11.0 |
| Baltimore | 24–510–0008 | 12.7 | 11.1 | 11.0 | 11.6 |

TABLE 2—BALTIMORE AREA 2007–2009 $PM_{2.5}$ DATA (IN μg/m³)

| City | Site ID | 2007 Annual mean | 2008 Annual mean | 2009 Annual mean | 2007–2009 Design value |
|---|---|---|---|---|---|
| Glen Burnie | 24–003–1003 | 13.4 | 12.6 | 11.1 | 12.4 |
| Padonia | 24–005–1007 | 13.3 | 11.9 | 10.2 | 11.8 |
| Essex | 24–005–3001 | 14.0 | 12.6 | 11.0 | 12.6 |
| Edgewood | 24–025–1001 | 12.2 | 11.3 | 9.6 | 11.0 |
| Baltimore | 24–510–0035 | 14.1 | * | * | * |
| Baltimore | 24–510–0006 | 13.1 | 12.2 | 10.1 | 11.8 |
| Baltimore | 24–510–0007 | 13.4 | 12.4 | 10.3 | 12.0 |
| Baltimore | 24–510–0008 | 15.0 | 12.7 | 11.1 | 12.9 |

* Monitor Site ID 24–510–0035 shut down in August 2008 due to demolition of the monitoring site.

Preliminary data for 2011 which has not been quality-assured or certified is included in Table 3 below. This preliminary 2011 data indicates that the Area continues to attain the annual $PM_{2.5}$ NAAQS.

TABLE 3—BALTIMORE AREA PRELIMINARY 2011 $PM_{2.5}$ DATA (IN μg/m³)

| City | Site ID | 2011 Preliminary annual mean |
|---|---|---|
| Glen Burnie | 24–003–1003 | 10.5 |
| Padonia | 24–005–1007 | 9.9 |
| Essex | 24–005–3001 | 10.6 |
| Edgewood | 24–025–1001 | 9.3 |
| Baltimore | 24–510–0006 | 9.9 |
| Baltimore | 24–510–0007 | 9.5 |
| Baltimore | 24–510–0008 | 10.8 |

Additional information about the monitoring network and air quality data can be found in the Technical Support Document (TSD) for this action which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2011–0819.

## IV. What is the effect of these actions?

If EPA's proposed clean data determination based on the most recent three years of quality-assured data and data available to date for 2011, is made final, the requirements for the Baltimore Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS would be suspended for so long as the Baltimore Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. See, 40 CFR 51.1004(c). Notably, as described below, any such determination would not be equivalent to the redesignation of the Baltimore Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. If this proposed determination is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register,** that the Area has violated the 1997 annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Baltimore Area, and the Area would thereafter have to address the applicable requirements. See, 40 CFR 51.1004(c).

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the designation status of the Baltimore Area would remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Baltimore Area.

In addition, if EPA's separate and independent proposed determination that the Area has attained the 1997 annual $PM_{2.5}$ standard by its applicable attainment date (April 5, 2010), is finalized, EPA will have met its requirement pursuant to section 179(c)(1) of the CAA to make a determination based on the Area's air quality data as of the attainment date whether the Area attained the standard by that date.

These two actions described above are proposed determinations regarding the Baltimore Area's attainment only with respect to the 1997 annual $PM_{2.5}$ NAAQS. Today's actions do not address the 24-hour $PM_{2.5}$ NAAQS. EPA is also withdrawing its previously proposed clean data determination (74 FR 38161) for the 1997 annual $PM_{2.5}$ standard since the previous action was never finalized and more current data is now available. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## V. Statutory and Executive Order Reviews

This action proposes to make attainment determinations based on air quality data and would, if finalized, result in the suspension of certain Federal requirements and would not impose any additional requirements. For that reason, this proposed action:

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

In addition, this proposed rule to find that the Baltimore Area attained the annual 1997 $PM_{2.5}$ standard and attained the standard by its attainment date does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 15, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011–30300 Filed 11–22–11; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R01–OAR–2011–0711; A–1–FRL–9496–2]**

## Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Determinations of Attainment of the One-Hour Ozone Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to determine that the Greater Connecticut serious one-hour ozone nonattainment area did not meet the applicable deadline of November 15, 2007, for attaining the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This proposed determination is based upon complete, quality-assured, certified ambient air monitoring data that show the area had an expected ozone exceedance rate above the level of the now revoked one-hour ozone NAAQS for the 2005–2007 monitoring period. Separate from and independent of this proposed determination, EPA is also proposing to determine that the Greater Connecticut serious one-hour ozone nonattainment area currently attains the now revoked one-hour NAAQS for ozone, based upon complete, quality-assured, certified ambient air monitoring data for 2008–2010. The area first attained the one-hour NAAQS during the 2006–2008 monitoring period, and continued in attainment during the 2007–2009, and 2008–2010 monitoring periods. Preliminary data available for 2011 also show the area continues to meet the one-hour NAAQS for ozone. EPA is proposing these determinations under the Clean Air Act.

**DATES:** Written comments must be received on or before December 23, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2011–0711 by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2011–0711, '' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OAR–2011–0711. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, email *Burkhart.Richard@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble:

I. What is EPA proposing?
A. Proposed Determination of Failure to Attain by Applicable Attainment Date
B. Proposed Determination of Current Attainment
II. What is the background for these proposed actions?
A. Statutory and Regulatory Background
B. Basis and Effect of Proposed Determinations
III. What is EPA's analysis of data for purposes of determining attainment of the one-hour ozone standard?
A. How does EPA compute whether an area meets the one-hour ozone standard?
B. EPA's Analysis of the One-Hour Ozone Data for the Greater Connecticut Area
IV. Proposed Determinations
V. Statutory and Executive Order Reviews

## I. What is EPA proposing?

EPA is proposing two separate and independent actions for the Greater Connecticut one-hour ozone serious nonattainment area (hereafter, ''the Greater Connecticut area'').

### *A. Proposed Determination of Failure to Attain by Applicable Attainment Date*

EPA is proposing to determine that the Greater Connecticut area did not attain the one-hour ozone NAAQS by the applicable attainment date, November 15, 2007. This proposed determination is based upon complete, quality-assured and certified air quality monitoring data for the 2005 through 2007 ozone seasons.

### *B. Proposed Determination of Current Attainment*

In addition, EPA is proposing to determine that the Greater Connecticut area is currently attaining the one-hour

ozone NAAQS based upon complete, quality-assured and certified ambient air monitoring data showing the area currently monitors monitored attainment of the one-hour ozone NAAQS, and that it has done so continuously since the 2006–2008 monitoring period. If this proposed determination is finalized, any obligations related to one-hour ozone contingency measures in the Greater Connecticut area shall be suspended for so long as the area continues to attain the one-hour ozone NAAQS.

## II. What is the background for these proposed actions?

### *A. Statutory and Regulatory Background*

EPA designated the Greater Connecticut area as nonattainment for one-hour ozone following the enactment of the Clean Air Act (CAA) Amendments of 1990. Most areas of the country that EPA designated nonattainment for the one-hour ozone NAAQS were classified by operation of law as marginal, moderate, serious, severe, or extreme, depending on the severity of the area's air quality problem. See CAA sections 107(d)(1)(C) and 181(a). The Greater Connecticut area was classified as serious. The one-hour ozone attainment deadline for the Greater Connecticut serious area was initially set for November 15, 1999, and later extended to November 15, 2007 based on EPA's Attainment Date Extension Policy. See 66 FR 634, January 3, 2001. The Greater Connecticut one-hour ozone nonattainment area consists of most of Connecticut, with the following exceptions: Bridgetown and New Milford in Litchfield County are excluded. Also, Fairfield County is excluded, save the City of Sheldon. See 40 CFR 81.307. The entire state was designated nonattainment for the one-hour standard, and divided into two nonattainment areas: Greater Connecticut and the Connecticut portion of the New York City area.

On July 18, 1997 (62 FR 38856), EPA promulgated a new, standard for ozone based on an 8-hour average concentration (the ''1997 8-hour ozone NAAQS''). EPA designated and classified most areas of the country under the eight-hour ozone NAAQS in an April 30, 2004 final rule. See 69 FR 23858. EPA designated Greater Connecticut as nonattainment for the 1997 8-hour ozone NAAQS, and at the time of designation the area did not meet the one-hour ozone standard. Again, the entire state was designated nonattainment for the 8-hour NAAQS, and divided into two nonattainment areas, with the same names as the one-hour areas, but with slightly different boundaries than the two one-hour areas. See 40 CFR 81.307.

On April 30, 2004, EPA issued a final rule (69 FR 23951) entitled ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1,'' referred to as the Phase 1 Rule. Among other matters, this rule revoked the one-hour ozone NAAQS in most areas of the country, effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470. The Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the eight-hour ozone NAAQS by identifying which one-hour requirements remain applicable in an area after revocation of the one-hour ozone NAAQS. Although, EPA revoked the one-hour ozone standard (effective June 15, 2005), eight-hour ozone nonattainment areas remain subject to certain one-hour, anti-backsliding requirements based on their one-hour ozone classification. Initially, in our rules to address the transition from the one-hour to the eight-hour ozone standard, EPA did not include one-hour contingency measures among the measures retained as one-hour ozone anti-backsliding requirements.[1] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements (and certain others not relevant here) from its anti-backsliding requirements. See *South Coast Air Quality Management District* v. *EPA*, 472 F.3d 882 (DC Cir. 2006), rehearing denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review. Thus, the Court vacated the provisions that excluded these requirements. As a result, States must continue to meet the obligations for one-hour ozone NAAQS contingency measures and, EPA has issued a proposed rule, that would remove the vacated provisions of 40 CFR 51.905(e), and addresses contingency measures for failure to attain, or make reasonable further progress toward attainment, for the one-hour standard. See 74 FR 2936, January 16, 2009 (proposed rule); and 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period).

[1] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

### *B. Basis and Effect of Proposed Determinations*

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD* v. *EPA,* 47 F.3d 882, at 903. In keeping with this responsibility with respect to specific one-hour anti-backsliding measures, such as contingency measures, EPA proposes to determine that Greater Connecticut failed to attain the one-hour ozone standard by its applicable attainment date. Consistent with 40 CFR 51.905(e)(2), and the South Coast decision, upon revocation of the one-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the one-hour NAAQS, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's determination here is linked solely to required, one-hour, anti-backsliding, contingency measures. A final determination of failure to attain will not result in reclassification of the area under the revoked one-hour standard, nor is EPA identifying or determining any new one-hour reclassification for the area. EPA is no longer required to reclassify an area to a higher classification for the one-hour ozone NAAQS based upon a determination that the area failed to attain that NAAQS by its attainment date. See 40 CFR 51.905(e)(2)(i)(B). Thus, even if we finalize our proposed determination that the area failed to attain the one-hour ozone NAAQS by its attainment deadline, the area will not be reclassified to a higher classification. Moreover, EPA has previously approved the attainment demonstration and Reasonable Further Progress (ROP) plans for this area, and in doing so noted that although there were no state implementation plan contingency measure reductions applicable to the Greater Connecticut area for failure to attain, there were federal measures the state had not accounted for in its attainment demonstration that provided more reductions than necessary to serve the purpose of contingency measures for this area. See 66 FR 634, January 3, 2001. In addition, EPA is proposing to determine that the Greater Connecticut area has attained the one-hour ozone standard since 2008. In this context, even if EPA's proposed determination that the area did not attain the standard in 2007 deadline is finalized, it will not trigger any additional obligations for the area under the one-hour ozone standard. Under EPA's ''Clean Data Policy'' interpretation, which was first

articulated for the one-hour standard and then codified for the 8-hour ozone standard (40 CFR 51.918),[2] a determination of attainment suspends obligations for attainment-related requirements for that standard, including contingency measures. See, for example, determination of one-hour ozone attainment for Baton Rouge, 75 FR 6570 (February 10, 2010).

## III. What is EPA's analysis of data for purposes of determining attainment of the one-hour ozone standard?

### *A. How does EPA compute whether an area meets the one-hour ozone standard?*

Although the one-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the one-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: ''The level of the national one-hour primary and secondary ambient air quality standards for ozone * * * is 0.12 parts per million. * * * The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations of 0.12 parts per million * * * is equal to or less than 1, as determined by appendix H to this part.'' Thus, compliance with the NAAQS is based on comparison of air quality concentrations with the standard and on how many days that standard has been exceeded, adjusted for the number of missing days.

For comparison with the NAAQS, EPA has clearly communicated the data handling conventions for the one-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance stating that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. See ''Guideline for the Interpretation of Ozone Air Quality Standards,'' EPA–450/4–79–003, OAQPS No. 1.2–108, January 1979. EPA has consistently applied the rounding convention in this 1979 guideline. See 68 FR 19111, April 17, 2003, 68 FR 62043, October 31, 2003, and 69 FR 21719, April 22, 2004. Then, EPA determines attainment status under the one-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over a three-year period. See 60 FR 3349, January 17, 1995 and also the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 57 FR 13506 April 16, 1992 (''General Preamble''). EPA's determination is based upon data that have been collected and quality-assured in accordance with 40 CFR 58, and recorded in EPA's Air Quality System (AQS) database. To account for missing data, the procedures found in appendix H to 40 CFR part 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances (''expected exceedance days'') at an air quality monitoring site. We determine if an area meets the one-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (*i.e.,* ''average number of expected exceedance days'') during the applicable 3-year period. See the General Preamble, 57 FR 13498, April 16, 1992. The term ''exceedance'' is used throughout this document to describe a daily maximum ozone measurement that is equal to or exceeds 0.125 ppm which is the level of the standard after rounding. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of expected exceedances occur at the same monitor. For more information please refer to 40 CFR 50.9, ''National one-hour primary and secondary ambient air quality standards for ozone'' and ''Interpretation of the one-hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, appendix H).

### *B. EPA's Analysis of the One-Hour Ozone Data for the Greater Connecticut Area*

The following tables show one-hour ozone data for the Greater Connecticut area for each of the three-year periods 2005–2007 (Table 1), 2006–2008 (Table 2), 2007–2009 (Table 3), and 2008–2010 (Table 4). In short, if the three-year average expected exceedances rate, shown in the far right column, is less than or equal to 1.0, the site meets the one-hour ozone NAAQS. If all sites in the area meet the one-hour ozone standard, then the area met the one-hour NAAQS during that time period.

TABLE 1—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE GREATER CONNECTICUT AREA FOR 2005–2007

| EPA AQS ID | Site | Year | Actual exceedance days over 0.124 ppm | Adjusted exceedance days for missing data | 3-year average expected exceedance rate |
|---|---|---|---|---|---|
| 090050006 | Cornwall | 2005 | 1 | 1.0 | 0.7 |
| | | 2006 | 0 | 0.0 | |
| | | 2007 | 1 | 1.0 | |
| 090031003 | East Hartford | 2005 | 3 | 3.1 | 2.0 |
| | | 2006 | 1 | 1.0 | |
| | | 2007 | 2 | 2.0 | |
| 090110008 | Groton | 2005 | 0 | 0.0 | 0.0 |
| | | 2006 | 0 | 0.0 | |
| | | 2007 | 0 | 0.0 | |
| 090110124 | Groton [3] | 2005 | | | 0.0 |
| | | 2006 | | | |

[2] The U.S. Court of Appeals for the District of Columbia Circuit upheld the provisions of 40 CFR 51.918, which codified the Clean Data Policy. Previously Courts of Appeals for several other Circuits upheld the Clean Data Policy under the one-hour standard. *See NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009); *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) and *Our Children's EarthFoundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion).

TABLE 1—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE GREATER CONNECTICUT AREA FOR 2005–2007—Continued

| EPA AQS ID | Site | Year | Actual exceedance days over 0.124 ppm | Adjusted exceedance days for missing data | 3-year average expected exceedance rate |
|---|---|---|---|---|---|
| | | 2007 | 0 | 0.0 | ..... |
| 090131001 | Stafford | 2005 | 1 | 1.0 | 1.0 |
| | | 2006 | 1 | 1.0 | ..... |
| | | 2007 | 1 | 1.0 | ..... |
| 090070007 | Middletown | 2005 | 3 | 3.0 | 1.7 |
| | | 2006 | 1 | 1.0 | ..... |
| | | 2007 | 1 | 1.0 | ..... |
| 090090027 | New Haven | 2005 | 1 | 1.0 | 0.7 |
| | | 2006 | 0 | 0.0 | ..... |
| | | 2007 | 1 | 1.0 | ..... |
| 090093002 | Madison | 2005 | 3 | 3.1 | 1.4 |
| | | 2006 | 1 | 1.0 | ..... |
| | | 2007 | 0 | 0.0 | ..... |

TABLE 2—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE GREATER CONNECTICUT AREA FOR 2006–2008

| EPA AQS ID | Site | Year | Actual exceedance days over 0.124 ppm | Adjusted exceedance days for missing data | 3-year average expected exceedance rate |
|---|---|---|---|---|---|
| 090050006 | Cornwall | 2006 | 0 | 0.0 | 0.3 |
| | | 2007 | 1 | 1.0 | ..... |
| | | 2008 | 0 | 0.0 | ..... |
| 090031003 | East Hartford | 2006 | 1 | 1.0 | 1.0 |
| | | 2007 | 2 | 2.0 | ..... |
| | | 2008 | 0 | 0.0 | ..... |
| 090110124 | Groton [4] | 2006 | 0 | 0.0 | 0.0 |
| | | 2007 | 0 | 0.0 | ..... |
| | | 2008 | 0 | 0.0 | ..... |
| 090131001 | Stafford | 2006 | 1 | 1.0 | 1.0 |
| | | 2007 | 1 | 1.0 | ..... |
| | | 2008 | 1 | 1.0 | ..... |
| 090070007 | Middletown | 2006 | 1 | 1.0 | 1.0 |
| | | 2007 | 1 | 1.0 | ..... |
| | | 2008 | 1 | 1.0 | ..... |
| 090090027 | New Haven | 2006 | 0 | 0.0 | 0.3 |
| | | 2007 | 1 | 1.0 | ..... |
| | | 2008 | 0 | 0.0 | ..... |
| 090093002 | Madison | 2006 | 1 | 1.0 | 0.7 |
| | | 2007 | 0 | 0.0 | ..... |
| | | 2008 | 1 | 1.0 | ..... |

TABLE 3—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE GREATER CONNECTICUT AREA FOR 2007–2009

| EPA AQS ID | Site | Year | Actual exceedance days over 0.124 ppm | Adjusted exceedance days for missing data | 3-year average expected exceedance rate |
|---|---|---|---|---|---|
| 090050006 | Cornwall | 2007 | 1 | 1.0 | 0.3 |

[3] Site moved in 2007. Ozone was monitored at both locations in 2007, and the data collected are comparable.

[4] AQS Number 090110008 before 2007.

TABLE 3—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE GREATER CONNECTICUT AREA FOR 2007–2009—Continued

| EPA AQS ID | Site | Year | Actual exceedance days over 0.124 ppm | Adjusted exceedance days for missing data | 3-year average expected exceedance rate |
|---|---|---|---|---|---|
| | | 2008 | 0 | 0.0 | ..... |
| | | 2009 | 0 | 0.0 | ..... |
| 090031003 | East Hartford | 2007 | 2 | 2.0 | 0.7 |
| | | 2008 | 0 | 0.0 | ..... |
| | | 2009 | 0 | 0.0 | ..... |
| 090110124 | Groton | 2007 | 0 | 0.0 | 0.0 |
| | | 2008 | 0 | 0.0 | ..... |
| | | 2009 | 0 | 0.0 | ..... |
| 090131001 | Stafford | 2007 | 1 | 1.0 | 0.7 |
| | | 2008 | 1 | 1.0 | ..... |
| | | 2009 | 0 | 0.0 | ..... |
| 090070007 | Middletown | 2007 | 1 | 1.0 | 0.7 |
| | | 2008 | 1 | 1.0 | ..... |
| | | 2009 | 0 | 0.0 | ..... |
| 090090027 | New Haven | 2007 | 1 | 1.0 | 0.3 |
| | | 2008 | 0 | 0.0 | ..... |
| | | 2009 | 0 | 0.0 | ..... |
| 090093002 | Madison | 2007 | 0 | 0.0 | 0.3 |
| | | 2008 | 1 | 1.0 | ..... |
| | | 2009 | 0 | 0.0 | ..... |

TABLE 4—AVERAGE EXPECTED EXCEEDANCE RATE FOR THE ONE-HOUR OZONE STANDARD IN THE GREATER CONNECTICUT AREA FOR 2008–2010

| EPA AQS ID | Site | Year | Actual exceedance days over 0.124 ppm | Adjusted exceedance days for missing data | 3-year average expected exceedance rate |
|---|---|---|---|---|---|
| 090050006 | Cornwall | 2008 | 0 | 0.0 | 0.0 |
| | | 2009 | 0 | 0.0 | ..... |
| | | 2010 | 0 | 0.0 | ..... |
| 090031003 | East Hartford | 2008 | 0 | 0.0 | 0.0 |
| | | 2009 | 0 | 0.0 | ..... |
| | | 2010 | 0 | 0.0 | ..... |
| 090110124 | Groton | 2008 | 0 | 0.0 | 0.0 |
| | | 2009 | 0 | 0.0 | ..... |
| | | 2010 | 0 | 0.0 | ..... |
| 090131001 | Stafford | 2008 | 1 | 1.0 | 0.3 |
| | | 2009 | 0 | 0.0 | ..... |
| | | 2010 | 0 | 0.0 | ..... |
| 090070007 | Middletown | 2008 | 1 | 1.0 | 0.3 |
| | | 2009 | 0 | 0.0 | ..... |
| | | 2010 | 0 | 0.0 | ..... |
| 090090027 | New Haven | 2008 | 0 | 0.0 | 0.0 |
| | | 2009 | 0 | 0.0 | ..... |
| | | 2010 | 0 | 0.0 | ..... |
| 090093002 | Madison | 2008 | 1 | 1.0 | 0.3 |
| | | 2009 | 0 | 0.0 | ..... |
| | | 2010 | 0 | 0.0 | ..... |

EPA has reviewed and evaluated these data in order to make two separate proposed determinations. First, EPA addresses whether the Greater Connecticut area attained the one-hour ozone standard by the applicable one-hour attainment date. As shown in Table 1, the Greater Connecticut one-hour ozone nonattainment area did not meet its attainment deadline of November 15, 2007, since three ozone monitors had expected exceedances rates above 1.0. In addition, the East Hartford ozone monitor recorded two exceedances of the now revoked one-hour ozone standard in 2007. Two exceedances at one monitor prevented Connecticut from requesting a one-year extension of the attainment date for the Greater Connecticut area. See CAA Section 181(a)(5).

Tables 2, 3 and 4, however, show the area subsequently met the one-hour ozone standard based on 2006–2008 ozone data (see Table 2) and continues to meet the one-hour standard based on complete, quality-assured data for subsequent time periods (see Tables 3 and 4). Preliminary ozone data available for 2011 also show that currently the area continues in attainment of the one-hour ozone standard. Thus, EPA is

proposing to determine that based on the most recent three years of complete quality-assured ozone monitoring data, the Greater Connecticut area is currently attaining the NAAQS.

## IV. Proposed Determinations

For the reasons set forth in this notice, EPA is proposing to determine that the Greater Connecticut one-hour ozone nonattainment area did not meet its applicable one-hour ozone attainment date of November 15, 2007, based on 2005–2007 quality-assured ozone monitoring data.[5] Separate from and independent of this proposed determination, EPA is also proposing to determine that the Greater Connecticut one-hour ozone nonattainment area is currently attaining the one-hour ozone standard, based on the most recent three years (2008–2010) of complete, quality-assured ozone monitoring data at all monitoring sites in the area. EPA's review of the data shows that the area began attaining the one-hour ozone standard in the 2006–2008 period, and has continued through 2007–2009 and 2008–2010. Preliminary data available for 2011 indicate that the area continues to attain the one-hour NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register.**

## V. Statutory and Executive Order Reviews

This action proposes to make determinations of attainment based on monitored air quality data and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

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

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

## List of Subjects in 40 CFR Part 52

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

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

Dated: November 14, 2011.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

[FR Doc. 2011–30254 Filed 11–22–11; 8:45 am]

**BILLING CODE 6560–50–P**

[5] For the reasons set forth above, a final determination that the Greater Connecticut one-hour ozone nonattainment area did not meet its applicable one-hour ozone attainment deadline will not result in reclassification of the area for the one-hour standard, nor in any additional air quality obligations for the area.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**RIN 0648–XA823**

## Atlantic Highly Migratory Species; Electronic Dealer Reporting System Workshop

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

**ACTION:** Notice of public workshop.

**SUMMARY:** On June 28, 2011, NMFS published a proposed rule that considered requiring, among other things, Federal Atlantic swordfish, shark, and tunas dealers (except for dealers reporting Atlantic bluefin tuna) to report commercially-harvested Atlantic sharks, swordfish, and bigeye, albacore, yellowfin, and skipjack (BAYS) tunas to NMFS through one centralized electronic reporting system. This electronic reporting system would allow dealers to submit Atlantic sharks, swordfish, and BAYS tuna data on a more real-time basis and more efficiently, which will reduce duplicative data submissions from different regions. NMFS proposed to delay the effective date of the electronic reporting requirements until 2012 in order to give sufficient time for dealers to adjust to implementation of the new system and the additional requirements. In this notice, NMFS announces the date and location for an upcoming workshop in the Caribbean area in order to introduce the new reporting system to HMS dealers. NMFS will announce additional workshops in a future notice.

**DATES:** The initial Workshop will be held on December 14, 2011, from 6 to 8 p.m.

**ADDRESSES:** The initial workshop will be held in St. Thomas, USVI, Frenchman's Reef and Morning Star Marriott Beach Resort, 5 Estate Bakkreore, St. Thomas, Virgin Islands, 00801. See **SUPPLEMENTARY INFORMATION** for additional details.

**FOR FURTHER INFORMATION CONTACT:** Delisse Ortiz or Karyl Brewster-Geisz, at (301) 427–8503 (phone) or (301) 713–1917 (fax) or *http://www.nmfs.noaa.gov/sfa/hms/index.htm.*

**SUPPLEMENTARY INFORMATION:** Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.,* and the Atlantic Tunas Convention Act

(ATCA), 16 U.S.C. 971 *et seq.* Under the MSA, NMFS must ensure consistency with the National Standards and manage fisheries to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under the ATCA, the Secretary of Commerce is required to promulgate regulations, as may be necessary and appropriate, to implement the recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under MSA and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

**Background**

The current regulations and infrastructure of the Atlantic HMS quota-monitoring systems result in a delay of several weeks to almost a month before NMFS receives dealer data. This can affect management and monitoring of small Atlantic HMS quotas and short fishing seasons. As such, on June 28, 2011 (76 FR 37750), NMFS published a proposed rule in the **Federal Register** that considered requiring, among other things, Federal Atlantic swordfish, shark, and tunas dealers (except for dealer reporting Atlantic bluefin tuna) to report commercially-harvested Atlantic sharks, swordfish, and BAYS tunas to NMFS through one centralized electronic reporting system. Under this new system, dealers would submit HMS data electronically instead of in a paper format and include additional information that is necessary for management of HMS (*e.g.,* vessel and logbook information). The electronic submission of data will eliminate the delay associated with mailing in reports to NMFS. In this manner, HMS landings data will be submitted on a more real-time basis, allowing for timely and efficient data collection for management of Atlantic HMS.

In order to give sufficient time for dealers to adjust to implementation of the new system and the additional requirements, NMFS proposed delaying implementation of the new HMS electronic reporting system for all federally-permitted HMS dealers until 2012. Additionally, NMFS decided to conduct outreach to HMD dealers to train them how to use the new system and help ease the transition from the current paper format to the new HMS electronic reporting system. NMFS will conduct an initial workshop for HMS dealers in St. Thomas, U.S.V.I. on December 14, 2011 (see **DATES** and **ADDRESSES**). NMSF will announce additional workshops in other regions in a future **Federal Register** notice.

Dated: November 18, 2011.

**Steven Thur,**

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

[FR Doc. 2011–30268 Filed 11–22–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**RIN 0648–BA17**

### Atlantic Highly Migratory Species; Atlantic Shark Management Measures

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

**ACTION:** Notice of workshops; extension of comment period.

**SUMMARY:** NMFS previously published, on September 16, 2011, a notice of intent (NOI) to prepare an environmental impact statement (EIS) and fishery management plan (FMP) amendment that would consider catch shares for the Atlantic shark fisheries. The comment period in the NOI ends on March 1, 2012. In this notice, NMFS announces the dates and locations for five upcoming scoping workshops to provide the opportunity for public comment on various design elements for potential catch shares programs in the Atlantic shark fisheries. Additionally, NMFS is extending the comment period to March 31, 2012, to provide additional opportunities for the five Fishery Management Councils, the Atlantic and Gulf States Marine Fisheries Commissions, and other interested parties to comment on the consideration of catch shares.

**DATES:** Workshops for Amendment 6 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) will be held from December 2011 through March 2012. See **SUPPLEMENTARY INFORMATION** for meeting dates, times, and locations. The deadline for comments on the NOI has been extended from March 1, 2012, as published in the NOI on September 16, 2011 (76 FR 57709), to 5 p.m. on March 31, 2012.

**ADDRESSES:** Workshops will be held in Madeira Beach, FL; Cocoa Beach, FL; Barnegat, NJ; Belle Chasse, LA; and Manteo, NC. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

As published on September 16, 2011 (76 FR 57709), written comments on this action may be submitted, identified by NOAA–NMFS–2010–0188, by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''Submit a Comment'' icon, then enter in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Fax:* (301) 713–1917, Attn: Margo Schulze-Haugen.
- *Mail:* NMFS SF1, 1315 East-West Highway, Silver Spring, MD 20910.

*Instructions:* All comments received are part of the public record and generally will be posted to portal *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Related documents—including the 2006 Consolidated HMS FMP and its amendments, and the 2010 Stock Assessment and Fishery Evaluation Report—are available upon request at the mailing address noted above or on the HMS Management Division's Web page at: *http://www.nmfs.noaa.gov/sfa/hms/*.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz, LeAnn Southward Hogan, or Guý DuBeck at (301) 427–8503 or fax at (301) 713–1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS FMP is implemented by regulations at 50 CFR part 635 and was amended in 2008 and 2010 to address management needs in the Atlantic shark fisheries.

On September 16, 2011 (76 FR 57709), NMFS published a NOI that announces NMFS intent to prepare an EIS and FMP Amendment that would consider catch shares for the Atlantic shark fisheries. The NOI also established a control date for eligibility to participate in an

Atlantic shark catch share program, announced the availability of a white paper describing design elements of catch share programs in general and issues specific to the Atlantic shark fisheries, and requested public comment on the implementation of catch shares in the Atlantic shark fisheries. In the NOI, the end of the comment period was announced as March 1, 2012. However, due to the timing of the South Atlantic Fishery Management Council and the March 2012 HMS Advisory Panel meeting, NMFS is extending the comment period to provide additional opportunity for the five Fishery Management Councils, the Atlantic and Gulf States Marine Fisheries Commissions, and other interested parties to comment on the NOI. Therefore, the comment period for the NOI has been extended to 5 p.m. on March 31, 2012.

**Request for Comments**

Five workshops will be held (see Table 1 for meeting dates, times, and locations) to provide the opportunity for public comment on potential catch share design elements for the Atlantic shark fisheries. These comments will be used to assist in the development of Amendment 6 to the 2006 Consolidated HMS FMP.

Specifically, NMFS is interested in obtaining feedback on issues, including, but not limited to: Eligibility (directed and/or incidental permit holders), specification of the resource unit (species and regions to include), initial allocation (based on catch history and/or other means), and catch share management. NMFS has prepared a white paper that provides more detail concerning some of the potential design elements for catch share programs and provides the public with additional information regarding issues in the Atlantic shark fisheries. Information related to catch shares for the Atlantic shark fisheries is available on the HMS Management Division Web site (*http://www.nmfs.noaa.gov/sfa/hms/sharks/catchshares.htm*).

Comments received on this action will assist NMFS in determining the options for rulemaking to conserve and manage shark resources and fisheries, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP.

TABLE 1—DATES, TIMES, AND LOCATIONS OF THE FIVE SCOPING WORKSHOPS

| Date | Time | Meeting locations | Address |
|---|---|---|---|
| December 6, 2011 | 5–8 p.m. | Cocoa Beach Library | 550 N. Brevard Ave., Cocoa Beach, FL 32931. |
| December 13, 2011 | 5–8 p.m. | Gulf Beaches Public Library | 200 Municipal Dr., Madeira Beach, FL 33708. |
| January 12, 2012 | 6–9 p.m. | Barnegat Branch Library | 112 Burr St., Barnegat, NJ 08005. |
| January 31, 2012 | 6–9 p.m. | Belle Chasse Auditorium | 8398 Highway 23, Belle Chasse, LA 70037. |
| February 16, 2012 | 5–8 p.m. | Manteo Town Hall | 407 Budleigh St., Manteo, NC 27954. |

In addition to the five scoping workshops, NMFS has requested time on the agendas of the upcoming Caribbean, Gulf of Mexico, New England, Mid-Atlantic, and South Atlantic Fishery Management Councils, as well as the Atlantic and Gulf States Marine Fisheries Commissions during the public comment period. NMFS also expects to share the comments received to date regarding catch shares for the Atlantic shark fisheries at the March 2012 HMS Advisory Panel meeting. The dates and location of the AP meeting will be announced in a future **Federal Register** notice.

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

Dated: November 18, 2011.

**Steven Thur,**

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

[FR Doc. 2011–30276 Filed 11–22–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**RIN 0648–BB24**

## Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Gulf of Alaska Pollock Fishery; Amendment 93

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

**ACTION:** Notice of availability of fishery management plan amendment; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council has submitted Amendment 93 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 93, if approved, would establish separate prohibited species catch (PSC) limits in the Central and Western Regulatory Areas of the Gulf of Alaska (GOA) for Chinook salmon (*Oncorhynchus tshawytscha*). NMFS would close the directed pollock fishery in those areas if the applicable limit is reached. This action also would require full retention of salmon in the Central and Western GOA pollock fisheries until an observer is provided the opportunity to count the number of salmon and to collect scientific data or biological samples from the salmon. This action is necessary to minimize Chinook salmon bycatch in the GOA pollock fishery to the extent practicable while preserving the potential for the full harvest of pollock total allowable catch within PSC limits. Amendment 93 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Comments on the amendment must be received on or before January 23, 2012.

**ADDRESSES:** Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0156, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter [NOAA–NMFS–2011–0156] in the keyword search. Locate the document you wish to comment on from the resulting list and click on the

''Submit a Comment'' icon on the right of that line.

• *Mail:* Submit written comments to P.O. Box 21668, Juneau, AK 99802.

• *Fax:* (907) 586–7557.

• *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mary Grady, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 93 to the FMP is available for public review and comment.

The groundfish fisheries in the exclusive economic zone of the GOA are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act (MSA). Amendment 93 would apply only to the management of the pollock fishery (*Theragra chalcogramma*) in the Central and Western Reporting Areas of the GOA. The Central and Western GOA Reporting Areas, defined at § 679.2 and in Figure 3 to 50 CFR part 679, include the Central and Western Regulatory Areas (Statistical Areas 610, 620, and 630) and the adjacent State of Alaska (State) waters. The fisheries affected by this action would include the GOA State parallel fisheries for pollock that take place in State waters around Kodiak Island, in the Chignik Area, and along the South Alaska Peninsula. Pollock harvests in these parallel fisheries occur in State waters and are typically opened and closed concurrently with Federal fisheries. The harvest by vessel operators participating in either the State parallel or Federal fisheries are deducted from the Federal total allowable catch (TAC) and PSC would be deducted from applicable PSC limits at the time the harvest is reported.

Harvest of Chinook salmon from vessels in the pollock parallel fisheries in State waters of the GOA will be deducted from the applicable PSC limit because coordinated State and Federal fisheries management provides consistent management for both groundfish and prohibited fish species that are distributed across State and Federal boundaries. Coordinated State and Federal fisheries management is desirable because the pollock fishery in parallel waters operate in both State and Federal waters and can cross the State and Federal boundary during a single haul. This management provides consistency to prevent confusion and eliminate loopholes that may occur under different requirements between State and Federal waters. Under parallel fisheries management the State and Federal fisheries are able to synchronize their seasons, which provides consistent time and area catch and management data for both groundfish and PSC limits.

The EA/RIR/IRFA indicates that a substantial portion of the pollock TAC in these areas is taken in State waters, at least in some years. Counting Chinook salmon PSC from State waters towards attainment of the Chinook salmon PSC limit would promote the effectiveness of the Federal PSC limits to protect Chinook salmon stocks as well as the interests of Chinook salmon users. Applying this action to the parallel fisheries in years of high Chinook salmon PSC catch could prevent the fleet from diverting effort into State waters to avoid reaching the PSC limit, and could effectively limit or reduce Chinook salmon PSC. The Council recommended inclusion of the State parallel fisheries in this action because only by counting Chinook salmon PSC landed in State waters against the Chinook salmon PSC limits that apply in the EEZ can NMFS, the State, and the Council avoid an undesirable displacement of fishery effort into State waters to avoid accrual of Chinook salmon PSC, a shift that could actually have the effect of increasing Chinook salmon PSC. Under the proposed FMP amendment and proposed rule, Chinook salmon PSC in State waters would count against the limits. When a limit is reached, NMFS will close Federal waters. The limit and the possibility of closure should create an incentive for the fleet to fish in areas with lower Chinook salmon PSC rates. In addition, the State has indicated that it will close the parallel fishery if and when a Federal closure occurs, which will limit Chinook PSC throughout the Western and Central GOA reporting areas.

If approved, Amendment 93 would establish PSC limits in the Central and Western GOA pollock fisheries. The annual PSC limit for the pollock fishery in the Central Reporting Area would be 18,316 Chinook salmon. The annual PSC limit for the pollock fishery in the Western Reporting Area would be 6,684 Chinook salmon. If the applicable Chinook salmon PSC limit for the respective regulatory area is reached, NMFS would close the directed pollock fishery in the respective regulatory area. The State would continue to manage the closures of the pollock fishery in State waters.

The principal objective of Chinook salmon bycatch management in the GOA pollock fishery is to minimize Chinook salmon bycatch to the extent practicable, while enabling the pollock harvest to contribute substantially towards the attainment of optimum yield in the groundfish fishery on an ongoing basis. Minimizing Chinook salmon bycatch while achieving optimum yield is necessary to maintain a healthy marine ecosystem, ensure long-term conservation and abundance of Chinook salmon, provide maximum benefit to fishermen and communities that depend on Chinook salmon and pollock resources, and comply with the MSA and other applicable Federal law.

In developing Amendment 93, the Council considered consistency with the Magnuson-Stevens Act's 10 National Standards. The Council designed Amendment 93 to balance the competing demands of the National Standards. Specifically, the Council recognized the need to balance and be consistent with both National Standard 9 and National Standard 1. National

Standard 9 requires that conservation and management measures shall, to the extent practicable, minimize bycatch. National Standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. The harvest of pollock in the Central and Western GOA contributes to the attainment of optimum yield in the GOA groundfish fishery; however, the ability to harvest the entire pollock TAC in any given year is not determinative of whether the GOA groundfish fishery achieves optimum yield on an ongoing basis. Providing the opportunity for the pollock fleet to harvest its TAC is one aspect of achieving optimum yield in the long term.

The Council also considered the importance of equity among user groups in recommending Amendment 93. In addition to providing a fair and equitable apportionment of the total GOA-wide PSC limit between the Central and Western GOA pollock fisheries, the Council also considered the needs of Chinook salmon users. The Council noted that the Chinook salmon resource is of value to many stakeholders, including, but not limited to, commercial, recreational, and cultural user groups; and it is a resource that is currently fully utilized. By recommending a PSC limit that reduces Chinook salmon bycatch, the Council also has considered the needs of these other user groups and has recommended measures to promote their access to the Chinook salmon resource.

Under Amendment 93, the Chinook salmon PSC limits are based on the Council's recommended GOA-wide goal of limiting Chinook salmon bycatch to no more than 25,000 salmon in the Central and Western GOA pollock fisheries. The Council noted that the pollock fishery accounts for approximately 75 percent of Chinook salmon PSC in the GOA groundfish fisheries based on the Chinook salmon bycatch levels from 2001 to 2010. At final action, the Council selected a GOA-wide Chinook salmon PSC limit of 25,000 salmon, having previously considered a GOA-wide limit of 22,500 Chinook salmon. The Council apportioned the selected GOA-wide Chinook salmon PSC limit between the Central and Western GOA on the basis of annual Chinook salmon PSC levels and pollock harvests in each area, set at an equal ratio during 2001 to 2010 excluding 2007 and 2010, with an adjustment intended to prevent either area from bearing a disproportionate share of the economic impact of the PSC limit. To apportion the 25,000 Chinook salmon PSC limit, the Council recommended a PSC limit for the Western GOA PSC that reflects the output of this formula, applied to a total GOA-wide PSC limit of 22,500 Chinook salmon, with no adjustment. The Council recommended a PSC limit for the Central GOA that reflects the output of this formula, applied to a GOA-wide PSC limit of 22,500 Chinook salmon, adjusted to allow for an additional 2,500 Chinook salmon. The Council recommended this increase to the Central GOA Chinook salmon PSC limit to enable a greater proportion of the overall pollock TAC to be harvested from the GOA and to more evenly balance the economic impacts to fishery participants in the Central GOA and fishery participants in the Western GOA. The analysis indicated that a Chinook salmon PSC limit in the Central GOA, based strictly on historic catch in the two areas with no adjustment, would have resulted in larger amounts of foregone pollock harvest by the pollock fishery in the Central GOA historically than the amount of pollock harvest that would have been foregone by the pollock fishery in the Western GOA under the corresponding limit in the Western GOA. The adjustment would likely reduce the amount of foregone pollock harvest in the Central GOA and the GOA as a whole. The adjustment would likely increase the total benefits realized from the harvest of the pollock resource and contribute toward the achievement of optimum yield from the GOA groundfish fishery as a whole, consistent with National Standard 1.

The EA/RIR/IRFA indicates that under this action, the Central and Western GOA pollock fisheries should be able to harvest the full pollock TAC in each area based on the lower, long-term (17 year) average bycatch rate, although they would be unable to harvest the full TAC based on the recent (8 year), higher average bycatch rate. The Council intends to maintain a constraint on the fleet as an incentive to reduce bycatch while still allowing for optimum yield from the groundfish fishery.

If Amendment 93 is approved, it is the Council's expectation that the PSC limits recommended in this action would be implemented in mid-2012. If Amendment 93 is approved and PSC limits are implemented in mid-2012, reduced PSC limits would apply in 2012, and these reduced PSC limits would apply for the C and D seasons only (August 25 through November 1). The Council recommended the PSC limits for the 2012 C and D seasons at the levels of 8,929 Chinook salmon in the GOA Central Reporting Area and 5,598 Chinook salmon in the GOA Western Reporting Area. If the Secretary approves the program, but NMFS cannot implement it before August 25, 2012, NMFS would implement it at the beginning of the next full fishing year (2013).

If approved, Amendment 93 would also require temporary retention of all salmon intercepted in the Central and Western GOA pollock fisheries until an observer is provided the opportunity to count the number of salmon and to collect scientific data or biological samples from the salmon. The Amendment would not allow the sale or personal use of retained salmon. The FMP would defer to regulations to describe the specific requirements for retaining salmon. The proposed rule for this action would establish the requirements for retaining and handling intercepted salmon species in the GOA pollock fisheries in order to allow observers to count and sample salmon to obtain scientific information before the salmon must be discarded or donated to the Prohibited Species Donation Program.

NMFS is soliciting public comments on proposed Amendment 93 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 93 following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 93 to be considered in the approval/disapproval decision on Amendment 93. NMFS will consider all comments received by the end of the comment period on Amendment 93, whether specifically directed to the FMP Amendment or the proposed rule, in the FMP Amendment approval/disapproval decision.

NMFS will not consider comments received after that date in the approval/disapproval decision on the Amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: November 17, 2011.

**Steven Thur,**

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

[FR Doc. 2011–30267 Filed 11–22–11; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register

Vol. 76, No. 226

Wednesday, November 23, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[11–BIS–0004]**

### Order Relating to Xun Wang

In the Matter of:

Xun Wang, No. 30, Lane 3535, Yindu Road, Shanghai, 201108, People's Republic of China,

and

115 Tobin Clark Drive, Hillsborough, CA 94010, Respondent.

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), has notified Xun Wang (''Wang'') of its intention to initiate an administrative proceeding against Wang pursuant to Section 766.3 of the Export Administration Regulations (the ''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the ''Act''),[2] through the issuance of a Charging Letter to Wang that, as amended, (''Charging Letter'') alleges that Wang committed one violation of the Regulations. Specifically, the charge is:

**Charge 1 15 CFR 764.2(d)—Conspiracy**

Beginning on or about June 15, 2006, and continuing through on or about March 2007, Xun Wang conspired and acted in concert with others, known and unknown, to bring about an act that constitutes a violation of the Regulations. The purpose of the conspiracy was to bring about the export of epoxy paint and epoxy paint thinner, items subject to the Regulations, to Pakistan, through China, for use in the Chasma 2 nuclear power plant that was under construction in Islamabad, Pakistan, and was a subordinate entity under the ownership and control of the Pakistan Atomic Energy Commission (''PAEC''), an entity that is listed on the Entity List set forth in Supplement No. 4 to Part 744 of the Regulations, without the required Department of Commerce license. The Chasma 2 nuclear plant was being constructed for PAEC by China Zhongyuan Engineering Corporation (''Zhongyuan'') with the assistance of subcontractor China Nuclear Industry Huaxing Construction Co. Ltd. (''Huaxing''). The epoxy paint and thinner were designated as EAR99[3] items and were certified as meeting industry standards for ''Level 1'' use in a nuclear reactor and core. Pursuant to Section 744.1 and Supplement No. 4 to Part 744 of the Regulations, a Department of Commerce license was required before these items could be exported or reexported to the PAEC or any PAEC subordinate nuclear power plant.

On or about June 8, 2006, Wang, at the time Managing Director of PPG Paints Trading (Shanghai) Co., Ltd. (''PPG Paints Trading''), learned that PPG's application for a U.S. export license to export the items to the PAEC's Chasma 2 plant had been denied. On or about June 15, 2006, Wang and other representatives of PPG Paints Trading met with Huaxing to discuss the denial of the license and whether PPG Paints Trading would be able to supply Huaxing with U.S.-origin PPG epoxy paint and thinner. During this meeting, Wang and Huaxing developed and agreed upon a scheme under which PPG Paints Trading would supply the PPG epoxy paint and thinner to Huaxing for use in the PAEC facility despite the lack of a U.S. export license. Under this scheme, a third-party Chinese distributor would be added to the transaction to facilitate obtaining the items from PPG and the transshipment of the items to Pakistan after their arrival in China. This transaction structure was designed to avoid the shipment of the items from the United States directly to the PAEC's Chasma 2 facility in Pakistan and the U.S. license requirement for such an export. Thereafter, the conspirators, including Xun Wang, took and/or directed actions in furtherance of the conspiracy, including, inter alia, selecting a third party in China to serve as the intermediary party in the transaction and arranging for the delivery of the items to China from PPG in the United States.

In so doing, Wang committed one violation of Section 764.2(d) of the Regulations.

*Whereas,* BIS and Wang have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

*Whereas,* I have approved of the terms of such Settlement Agreement;

*It Is Therefore Ordered:*

*First,* Wang shall be assessed a civil penalty in the amount of $250,000. Wang shall pay $50,000 to the U.S. Department of Commerce within 30 days of the date of the Order. Wang shall pay the U.S. Department of Commerce $50,000 not later than April 30, 2012; $50,000 not later than July 30, 2012; and $50,000 not later than October 30, 2012. Payment of the remaining $50,000 shall be suspended for a period of five years from the date of the Order, and thereafter shall be waived, provided that during the five-year payment probationary period under the Order, Wang has committed no violation of the Act, or any regulation, order, license or authorization issued thereunder and has made full and timely payment of $200,000 as set forth above.

*Second,* that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Wang will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

*Third,* that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Wang.

*Fourth,* that for a period of ten (10) years from the date of entry of the Order, Xun Wang, with last known addresses of No. 30, Lane 3535, Yindu Road, Shanghai, 201108, People's Republic of China, and 115 Tobin Clark Drive, Hillsborough, CA 94010, and when acting for or on her behalf, her successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as ''Denied

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2011). The charged violation occurred in 2006 and 2007. The Regulations governing the violation at issue are found in the 2006 and 2007 versions of the Code of Federal Regulations. 15 CFR parts 730–774 (2006–2007). The 2011 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. app. 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2011 (76 FR 50,661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*).

[3] EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR 734.3(c) (2011).

Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Fifth,* that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Sixth,* that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

*Seventh,* that, as authorized by Section 766.18(c) of the Regulations, the ten-year denial period set forth above shall be active for a period of five years from the date of the Order. The remaining five years of the denial period shall be suspended, and shall thereafter be waived at the conclusion of the ten-year denial period, provided that Wang has made full and timely payment of the civil penalty as set forth above and has committed no other violation of the Act or any regulation, order, license or authorization issued thereunder during the ten-year denial period. If Wang does not make full and timely payment of the civil penalty or commits another violation, the suspension may be modified or revoked by BIS.

*Eighth,* that the Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

*Ninth,* that this Order shall be served on Wang and on BIS, and shall be published in the **Federal Register**.

*This Order,* which constitutes the final agency action in this matter, is effective immediately.

Issued this 16 day of November, 2011.

**David W. Mills,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 2011–30222 Filed 11–22–11; 8:45 a.m.]

BILLING CODE ;P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–836]**

### Glycine From the People's Republic of China; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* November 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–3931 or (202) 482–3019, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April, 27, 2011, the Department of Commerce (the Department) published the initiation of the administrative review of the antidumping duty order on glycine from the People's Republic of China (PRC) in the **Federal Register**. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 76 FR 23545 (April 27, 2011). The review covers the period of March 1, 2010, to February 28, 2011. The current deadline for the preliminary results of review is December 1, 2011.

#### Extension of Time Limit for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245 day time period for the preliminary results to 365 days.

The Department finds that it is not practicable to complete the preliminary results of this review within the original time frame because it needs to obtain additional information from the respondent company, Baoding Mantong Fine Chemistry, Co., Ltd., in order to complete its analysis. Because the Department requires additional time to obtain and analyze this information, it is not practicable to complete this review by the current deadline of December 1, 2011. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than March 30, 2012, which is 365 days from the last day of the anniversary month of this order. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 9, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–30005 Filed 11–22–11; 8:45 am]

**BILLING CODE 3510–DS–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA840**

### Marine Mammals; File No. 16479

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that The Pacific Whale Foundation [Responsible Party: Gregory Kaufman; Principal Investigator: Daniela Maldini], 300 Maalaea Road, Suite 211, Wailuku, HI 96793, has applied in due form for a permit to conduct research on humpback whales (*Megaptera novaeangliae*).

**DATES:** Written, telefaxed, or email comments must be received on or before December 23, 2011.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16479 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Laura Morse or Joselyd Garcia-Reyes, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The proposed permit would authorize vessel based research on humpback whales in Maui County waters, Hawaii to quantify the potential for near misses between vessels and humpback whales, and define the probability of 'surprise encounters' with humpback whales in relation to time of day, environmental variables, vessel behavior, whale abundance, and individual sex and age classes. Up to 567 humpback whales may be approached annually for photo-identification and behavioral observation and all Hawaiian insular false killer whales (*Pseudorca crassidens*) may be incidentally harassed by the research activities. The permit would be valid for a period of five years.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft EA is available for review and comment simultaneous with the scientific research permit application.

Concurrent with the publication of this notice in the **Federal Register,** NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 17, 2011.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–30275 Filed 11–22–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA841**

### Pacific Fishery Management Council; Public Meetings/Workshop

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

**ACTION:** Notice of public teleconference.

**SUMMARY:** The NMFS Northwest Fisheries Science Center and Pacific Fishery Management Council (Council) will hold an online webinar to review and critique its groundfish stock assessment process in 2011. The online Groundfish Stock Assessment Process Review Workshop webinar is open to the public.

**DATES:** The Groundfish Stock Assessment Process Review Workshop webinar will commence at 1 p.m., Thursday, December 8, 2011 and continue until 5 p.m. or as necessary to complete business for the day.

**ADDRESSES:** To join the online Groundfish Stock Assessment Process Review Workshop webinar from the U.S. Pacific time zone, go to *https://nwfsc.webex.com/nwfsc/j.php?ED=164913422&UID=1227485477&RT=MiM0.* To join the online Groundfish Stock Assessment Process Review Workshop webinar from other time zones or to view the webinar in languages other than English, go to *https://nwfsc.webex.com/nwfsc/j.php?ED=164913422&UID=1227485477&ORT=MiM0.* If requested, enter your name, email address, and the meeting number, which is 805–527–249. Click ''join'' when the login process is completed. No password is required to join the online webinar.

To only join the audio teleconference of the Groundfish Stock Assessment Process Review Workshop from the U.S. or Canada, call the toll number 1 (408) 600–3600 (note: this is not a toll-free number) and use the access code 805–527–249 when prompted.

A public listening station for the Groundfish Stock Assessment Process Review Workshop webinar will also be available in the large conference room at the Council office, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280. Other public listening stations may be organized prior to the Groundfish Stock Assessment Process Review Workshop. For further information on public listening stations,

call Mr. John DeVore at (503) 820–2280 or Dr. Jim Hastie at (206) 860–3412.

*Council address:* Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384; *telephone:* (503) 820–2280.

**FOR FURTHER INFORMATION CONTACT:** Mr. John DeVore, Pacific Fishery Management Council; *telephone:* (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the Groundfish Stock Assessment Process Review Workshop webinar is for participants in the Council's 2011 stock assessment process to consider the procedures used in 2011 to assess and update groundfish stock abundance and develop recommendations for improving the process for future assessments and future assessment reviews. No management actions will be decided in this workshop. Any recommendations developed at the workshop will be submitted for consideration by the Council at its March meeting in Sacramento, CA.

Although non-emergency issues not identified in the workshop agenda may come before the workshop participants for discussion, those issues may not be the subject of formal action during this workshop. Formal action at the workshop will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the workshop participants' intent to take final action to address the emergency.

## Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the workshop date.

Dated: November 18, 2011.

**Tracey L. Thompson,**

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

[FR Doc. 2011–30211 Filed 11–22–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA835**

### Marine Mammals; File No. 16314

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that a permit has been issued to Jennifer Lewis, Ph.D., Tropical Dolphin Research Foundation, Aventura, FL to conduct research on bottlenose dolphins (*Tursiops truncatus*).

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

**FOR FURTHER INFORMATION CONTACT:** Joselyd Garcia-Reyes or Carrie Hubard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** On June 10, 2011, notice was published in the **Federal Register** (76 FR 34053) that a request for a permit to conduct research on bottlenose dolphins had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 16314 authorizes Dr. Lewis to conduct photo-identification surveys and biopsy sampling in Whitewater Bay, Shark River, Ponce de Leon Bay and Florida Bay, which are found in Everglades National Park. Up to 3,020 bottlenose dolphins could be taken by level B harassment each year during photo-identification surveys. Additionally, up to 38 bottlenose dolphins from each location could be taken by level A harassment annually, to acquire 30 successful biopsy samples from each location over the life of the permit. Research would stop when the desired number of samples has been obtained. The permit is valid through November 28, 2016.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 18, 2011.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–30270 Filed 11–22–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA836**

### Marine Mammals; File No. 15274

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that a permit has been issued to Dan R. Salden, Ph.D., Hawaii Whale Research Foundation, 52 Cheshire Drive, Maryville, IL 62062 to conduct research on humpback whales (*Megaptera novaeangliae*).

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Joselyd Garcia-Reyes or Carrie Hubard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** On January 31, 2011, notice was published in the **Federal Register** (76 FR 5338) that a request for a permit to conduct research on humpback whales had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Authorized research will include harassment of humpback whales, Hawaiian Insular false killer whales (*Pseudorca crassidens*), and six non-ESA-listed cetaceans through passive acoustics, underwater photography and

videography, photo-identification surveys, and to collect sloughed skin around the waters of Hawaii, primarily the Kona Coast and Maui County near-Lanai waters, Kalohi Channel, and Pailolo Channel. Research would also occur in Southeast Alaska and Kachemak Bay area when platforms become available. The permit is valid until November 15, 2016.

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on November 8, 2011.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm. 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

Dated: November 18, 2011.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–30273 Filed 11–22–11; 8:45 am]

BILLING CODE 3510–22–P

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, November 30, 2011; 10 a.m.–11 a.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**Matter To Be Considered:**

*Compliance Status Report.*

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: November 21, 2011.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2011–30393 Filed 11–21–11; 4:15 p.m.]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DOD–2011–OS–0055]**

### Defense Logistics Agency Revised Regulation 1000.22, Environmental Considerations in Defense Logistics Agency Actions

**AGENCY:** Defense Logistics Agency, Department of Defense.

**ACTION:** Revised Defense Logistics Agency Regulation (DLAR) 1000.22.

**SUMMARY:** On May 18, 2011, the Defense Logistics Agency (DLA) published a Notice of Availability (NOA) in the **Federal Register** (76 FR 28757) announcing the revised Defense Logistics Agency Regulation (DLAR) 1000.22 implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA) and Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500–1508). The revised DLA regulation was available for a 30-day public comment period. DLA has incorporated the comment received from the Navy, and after a conformity review by the CEQ, DLA is adopting the revised regulation.

**ADDRESSES:** The final regulation is available for review on the following DLA Web site—*http://www.dla.mil/dlaps/.*

Dated: November 18, 2011.

**Aaron Siegel,**

*Alternate OSD* **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. 2011–30251 Filed 11–22–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID DOD–2011–OS–0130]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Notice to Alter a System of Records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action would be effective without further notice on December 23, 2011 unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 17, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and

Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 17, 2011.

**Aaron Siegel,**

*Alternate OSD* **Federal Register** *Liaison Officer, Department of Defense.*

**DMDC 01**

**SYSTEM NAME:**

Defense Manpower Data Center Data Base (August 7, 2009, 74 FR 39666).

**CHANGES:**

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with ''All Army, Navy, Air Force, Marine Corps, and Coast Guard officer and enlisted personnel who served on active duty from July 1, 1968 and after or who have been a member of a reserve component since July 1975 (hereafter the ''Armed Forces''); retired Armed Forces personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA) and the Public Health Service (PHS) (with Armed Forces above, hereafter referred to as the ''Uniformed Services''). All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972. Veterans who used the Veterans Education Assistance Program (VEAP) from January 1977 through June 1985.

Participants in the Department of Health and Human Services National Longitudinal Survey.

Survivors of retired Armed Forces personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased Armed Forces personnel; 100% disabled veterans and their survivors; and survivors of retired officers of NOAA and PHS who are eligible for, or are currently receiving, Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs' insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants.

All Federal civilian retirees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

Individuals who are authorized web access to DMDC computer systems and databases.''

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number (SSN), DoD Identification Number, citizenship data, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various in-service education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Primary and secondary fingerprints of Military Entrance Processing Command (MEPCOM) applicants.

Department of Veterans Affairs disability payment records. Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

**EXTRACT FROM OFFICE OF PERSONNEL MANAGEMENT (OPM)**

OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number (SSN), name, and work address.

Military drug test records containing the Social Security Number (SSN), date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number (SSN), email address, phone number, of those having web access to DMDC computer systems and databases, to include dates and times of access.''

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 20 U.S.C. 1070(f)(4), Higher Education Opportunity Act; Pub.L. 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN), as amended.''

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veterans Affairs (DVA):

a. To provide Uniformed Service personnel and pay data for present and former Uniformed Service personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying Armed Service personnel data to the DVA and

its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former Uniformed Service personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty Uniformed Service personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing identification of reserve duty, including full time support National Guard/Reserve Armed Forces personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

f. To provide identifying Uniformed Service personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging civil service and Reserve personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

c. Matching for administrative purposes to include updated employer addresses of Federal civil service employees who are reservists and demographic data on civil service employees who are reservists.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of Armed Forces personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD civilian employees and Armed Forces members who may be improperly receiving funds under the Temporary Assistance for Needy Families (TANF).

a. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

**Note 1:** Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

**Note 2:** Quarterly wage information is not disclosed for those individuals performing intelligence or counter intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns, or residents are counted for HCFA reimbursement to hospitals.

d. To the Centers for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of Uniformed Services personnel or veterans, to include family members.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the Public Assistance Reporting Information System (PARIS) for the purpose of determining continued eligibility and help eliminate fraud and abuse in benefit programs by identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of:

(1) Conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

(2) Obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

**Note 3:** Earnings data obtained from the SSA and used by DoD does not contain any information that identifies the individual about whom the earnings data pertains.

To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) to the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).

d. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and members of the Uniformed Services by the states. To the Department of Labor to survey Armed Forces separations to determine the effectiveness of programs assisting veterans to obtain employment.

8. To Federal and Quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior Armed Forces service credit for their employees or for job applicants. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub.L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

9. To state and local law enforcement investigative agencies to obtain military history information for the purpose of ongoing investigations.

10. To Federal and Quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of Uniformed Service and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. has determined that the research purpose (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. has required the recipient to (1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

11. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

12. To Federal and state agencies for purposes of validating demographic data (*e.g.,* Social Security Number, citizenship status, date and place of birth, *etc.*) for individuals in Uniformed Service personnel and pay files so that accurate information is available in support of Uniformed Service requirements.

13. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

14. To Federal and State agencies, as well as their contractors and grantees, for purposes of providing military wage, training, and educational information so that Federal-reporting requirements, as mandated by statute, such as the Workforce Investment Act (29 U.S.C. 2801, *et. seq.*) and the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2301, *et. seq.*) can be satisfied.

15. To Federal Agencies, including the Department of Education, to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of identifying dependent children of those Armed Forces members killed in Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF) Afghanistan Only for possible benefits.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

**Note 5:** Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.''

* * * * *

**NOTIFICATION PROCEDURES:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, current address, and telephone number of the individual.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed within the United States, its territories, possessions, or

commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the full name, Social Security Number (SSN), date of birth, current address, and telephone number of the individual and be signed.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.''

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with ''Record sources are individuals via survey questionnaires, the Uniformed Services, the Department of Veterans Affairs, the Office of Personnel Management, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Executive Office of the President, and the Selective Service System.''

* * * * *

**DMDC 01**

**SYSTEM NAME:**

Defense Manpower Data Center Data Base.

**SYSTEM LOCATION:**

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Army, Navy, Air Force, Marine Corps, and Coast Guard officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975 (hereafter the ''Armed Forces''); retired Armed Forces personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration (NOAA) and the Public Health Service (PHS) (with Armed Forces above, hereafter referred to as the ''Uniformed Services''). All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972. Veterans who used the Veterans Education Assistance Program (VEAP) from January 1977 through June 1985.

Participants in the Department of Health and Human Services National Longitudinal Survey.

Survivors of retired Armed Forces personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased Armed Forces personnel; 100% disabled veterans and their survivors; and survivors of retired officers of NOAA and PHS who are eligible for, or are currently receiving, Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs' insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants.

All Federal civilian retirees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

Individuals who are authorized web access to DMDC computer systems and databases.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number (SSN), DoD Identification Number, citizenship data, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various in-service education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Primary and secondary fingerprints of Military Entrance Processing Command (MEPCOM) applicants.

Department of Veterans Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Extract from Office of Personnel Management (OPM) OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home

address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number (SSN), name, and work address.

Military drug test records containing the Social Security Number (SSN), date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number (SSN), email address, phone number, of those having web access to DMDC computer systems and databases, to include dates and times of access.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 20 U.S.C. 1070(f)(4), Higher Education Opportunity Act; Pub. L. 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN), as amended.

**PURPOSE(S):**

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and Armed Forces personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and Armed Forces personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified.

To collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of studies and policy as related to the health and well-being of current and past Armed Forces and DoD-affiliated personnel; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals.

Armed Forces drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports. No personal identifiers will be included in the demographic data reports. All requests for Service specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

DMDC web usage data will be used to validate continued need for user access to DMDC computer systems and databases, to address problems associated with web access, and to ensure that access is only for official purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veterans Affairs (DVA):

a. To provide Uniformed Service personnel and pay data for present and former Uniformed Service personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying Armed Service personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former Uniformed Service personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty Uniformed Service personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing identification of reserve duty, including full time support National Guard/Reserve Armed Forces personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

f. To provide identifying Uniformed Service personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub.L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging civil service and Reserve personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

c. Matching for administrative purposes to include updated employer addresses of Federal civil service employees who are reservists and demographic data on civil service employees who are reservists.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of Armed Forces personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD civilian employees and Armed Forces members who may be improperly receiving funds under the Temporary Assistance for Needy Families (TANF).

a. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

**Note 1:** Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

**Note 2:** Quarterly wage information is not disclosed for those individuals performing intelligence or counter intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns, or residents are counted for HCFA reimbursement to hospitals.

d. To the Centers for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of Uniformed Services personnel or veterans, to include family members.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the Public Assistance Reporting Information System (PARIS) for the purpose of determining continued eligibility and help eliminate fraud and abuse in benefit programs by identifying individuals who are receiving Federal compensation or pension payments and also are receiving payments pursuant to Federal benefit programs being administered by the States.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of:

(1) Conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

(2) Obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

**Note 3:** Earnings data obtained from the SSA and used by DoD does not contain any information that identifies the individual about whom the earnings data pertains.

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) to the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).

d. To the Office of Disability and Insurance Security Programs, for the purpose of expediting disability processing of wounded military service members and veterans.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and members of the Uniformed Services by the states. To the Department of Labor to survey Armed Forces separations to determine the effectiveness of programs assisting veterans to obtain employment.

8. To Federal and Quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior Armed Forces service credit for their employees or for job applicants. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

9. To state and local law enforcement investigative agencies to obtain military history information for the purpose of ongoing investigations.

10. To Federal and Quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of Uniformed Service and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. has determined that the research purpose (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. has required the recipient to (1) Establish reasonable administrative, technical, and physical safeguards to

prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

11. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

12. To Federal and state agencies for purposes of validating demographic data (*e.g.,* Social Security Number, citizenship status, date and place of birth, *etc.*) for individuals in Uniformed Service personnel and pay files so that accurate information is available in support of Uniformed Service requirements.

13. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub.L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

14. To Federal and State agencies, as well as their contractors and grantees, for purposes of providing military wage, training, and educational information so that Federal-reporting requirements, as mandated by statute, such as the Workforce Investment Act (29 U.S.C. 2801, *et seq.*) and the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2301, *et seq.*) can be satisfied.

15. To Federal Agencies, including the Department of Education, to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of identifying dependent children of those Armed Forces members killed in Operation Iraqi Freedom and Operation Enduring Freedom (OIF/OEF) Afghanistan Only for possible benefits.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

**Note 5:** Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Retrieved by name, Social Security Number (SSN), DoD ID number, occupation, or any other data element contained in the system.

**SAFEGUARDS:**

Access to personal information is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of Common Access Cards (CAC). Physical entry is restricted by the use of locks, guards, and administrative procedures. All individuals granted access to this system of records are to have taken Information Assurance and Privacy Act training; all have been through the vetting process and have ADP ratings.

**RETENTION AND DISPOSAL:**

The records are used to provide a centralized system within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analyses, and conduct scientific studies or medical follow-up programs and other related studies/analyses. Records are retained as follows:

(1) Input/source records are deleted or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Exception: Apply NARA-approved disposition instructions to the data files residing in other DMDC data bases.

(2) The Master File is retained permanently. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

(3) Outputs records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes. Note: This disposition instruction applies only to record keeping copies of the reports retained by DMDC. The DoD office requiring creation of the report should maintain its record keeping copy in accordance with NARA approved disposition instructions for such reports.

(4) System documentation (codebooks, record layouts, and other system documentation) are retained permanently and transferred to the National Archives along with the master file in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the full name, Social Security Number (SSN), date of birth, current address, and telephone number of the individual.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained

in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the full name, Social Security Number (SSN), date of birth, current address, and telephone number of the individual and be signed.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

**CONTESTING RECORD PROCEDURES:**

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Record sources are individuals via survey questionnaires, the Uniformed Services, the Department of Veterans Affairs, the Office of Personnel Management, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Executive Office of the President, and the Selective Service System.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2011–30236 Filed 11–22–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

### TRICARE, Formerly Known as the Civilian Health and Medical Program of the Uniformed Services; Calendar Year (CY) 2012 TRICARE Young Adult (TYA) Program Premium Update

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Notice of Updated TYA Premiums for CY 2012.

**SUMMARY:** The interim final rule published in the **Federal Register** on April 27, 2011, (76 FR 23479–23485) sets forth rules to implement TYA. Included in this interim final rule were provisions for updating TYA premiums for each CY. This notice provides the updated TYA Program premiums for CY 2012.

**DATES:** CY 2012 rates contained in this notice are effective for services on or after January 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark A. Ellis, TRICARE Management Activity (TMA), Policy and Benefits Branch, 5111 Leesburg Pike, Suite 810A, Falls Church, Virginia 22041; or call (703) 681–0039.

**SUPPLEMENTARY INFORMATION:** The interim final rule published in the **Federal Register** on April 27, 2011, (76 FR 23479–23485) sets forth rules to implement TYA as required by Title 10, United States Code, Section 1110b. Included in this interim final rule were provisions for updating TYA premiums for each CY. By law, qualified young adult dependents are charged TYA premiums that represent the full government cost of providing such coverage. Until premiums can be based on actual TYA costs, TYA premiums are based on the actual costs during preceding CYs for providing benefits to a similarly-aged group of dependents that are TRICARE-eligible.

TMA has updated the monthly premiums for CY 2012 as shown below:

MONTHLY TYA PREMIUMS FOR CY 2012

| Type of coverage | Monthly rate |
|---|---|
| TRICARE Standard Plans .... | $176 |
| TRICARE Prime Plans ..... | $201 |

The above premiums are effective for services rendered on or after January 1, 2012.

Dated: October 19, 2011.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–30165 Filed 11–22–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID USAF–2011–0024]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, Department of Defense (DoD).

**ACTION:** Notice to delete a system of records.

**SUMMARY:** The Department of the Air Force is deleting a systems of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on December 23, 2011 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, *Attn:* SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800, or by phone at (202) 404–6575.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from

the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 17, 2011.

**Aaron Siegel,**

*Alternate OSD* **Federal Register** *Liaison Officer, Department of Defense.*

Deletion:

**F051 AFJA A**

**SYSTEM NAME:**

Freedom of Information Act Appeal Records (December 12, 2008, 73 FR 75688).

Reason: Based upon a recent review of F051 AFJA A, The Freedom of Information Act Appeal Records, by the Department of the Air Force, it has been determined that all information contained in F051 AFJA A has been consolidated into F033 AF A, Information Requests-Freedom of Information Act (May 19, 2011, 76 FR 28962), and can therefore be deleted.

[FR Doc. 2011–30144 Filed 11–22–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID USA–2011–0026]**

### Proposed Collection; Comment Request

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces the following 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 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 January 23, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, 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** notice. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instructions, please write to the Project Manager (PM) Department of Defense (DoD) Biometrics, 200 Stovall St., Alexandria, VA 22332.

*Title and OMB Control Number:* Forward Deployed Biometrics Collection; OMB Control Number 0702–TBD.

*Needs and Uses:* This information collection requirement is needed for DoD in forward deployments to verify or identify individuals encountered in DoD areas of responsibility (AOR) and determine, based on information maintained by DoD, whether that individual, poses a threat to DoD's logical or physical assets, or is a threat to national security. As such, DoD has developed biometric information systems capable of collecting and storing biometric images, associated biographic and contextual information; matching biometrics against local and external biometric galleries; displaying the results of the biometric searches; and as appropriate issuing credentials that contains the individual's identity.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 23,295.

*Number of Respondents:* 301,580.

*Responses per Respondent:* 1.

*Average Burden per Response:* 4.6 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This collection supports DoD by verifying or identifying individuals such as terrorists, combatants, makers of explosive devices, detainees, criminals, locally employed non-U.S. person and other persons of interest. Such identification helps military operations including detainee management and questioning, base access, counterintelligence screening, border control, displaced persons management and a host of other missions.

Dated: November 17, 2011.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–30166 Filed 11–22–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Department of Education (the Department), 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 and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 23, 2012.

**ADDRESSES:** Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that

Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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.

Dated: November 18, 2011.

**Darrin King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

**Institute of Education Sciences**

*Type of Review:* Revision.

*Title of Collection:* Schools and Staffing Survey (SASS) Teacher Status Update 2012 for Teacher Follow-up Survey (TFS:13).

*OMB Control Number:* 1850–0598.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Once.

*Affected Public:* State, Local or Tribal Government.

*Total Estimated Number of Annual Responses:* 12,870.

*Total Estimated Annual Burden Hours:* 2,145.

*Abstract:* The Schools and Staffing Survey (SASS) is an in-depth, nationally-representative survey of first through twelfth grade public and private school teachers, principals, schools, library media centers, and school districts. Kindergarten teachers in schools with at least a first grade are also surveyed. For traditional public school districts, principals, schools, teachers and school libraries, the survey estimates are state-representative. For public charter schools, principals, teachers, and school libraries, the survey estimates are nationally-representative. For private school principals, schools, and teachers, the survey estimates are representative of private school types. There are two additional components within SASS's 4-year data collection cycle: the Teacher Follow-up Survey (TFS) and the Principal Follow-up Survey, which are conducted a year after the SASS main collection. In preparation for TFS, in the year following SASS, schools that provided a teacher list form in SASS schools are sent a Teacher Follow-up Survey Teacher Status update form (TFS–1) requesting information regarding the occupational status of each interviewed teacher. These data are used to stratify the teachers for TFS sampling into groups of ''stayers'' (still teaching at the same school), ''movers'' (still teaching, but at a different school) or ''leavers'' (no longer teaching). The current school principal or someone else in the front office knowledgeable about the school's staff completes the TFS–1. This submission requests approval for collecting data on the current status of SASS teachers using the TFS–1 form.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4755. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–30301 Filed 11–22–11; 8:45 am]

BILLING CODE 4000–01–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:* RP12–152–000.

*Applicants:* Northern Natural Gas Company.

*Description:* 20111115 Miscellaneous Filing to be effective 12/16/2011.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5062.

*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–153–000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* Negotiated Rates Nov. 2011 Cleanup to be effective 12/16/2011.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5131.

*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–154–000.

*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* Amended Negotiated Rate Filing—Devon to be effective 9/1/2011.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5158.

*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–155–000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* AEP 31836 Negotiated Rate Agreement Filing to be effective 12/1/2011.

*Filed Date:* 11/16/2011.

*Accession Number:* 20111116–5029.

*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–156–000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* South Jersey 11–16–2011 Negotiated Rate to be effective 11/16/2011.

*Filed Date:* 11/16/2011.

*Accession Number:* 20111116–5032.

*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–157–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* 11/16/11 Negotiated Rates—Barclays Bank PLC (HUB) to be effective 11/15/2011.

*Filed Date:* 11/16/2011.

*Accession Number:* 20111116–5126.

*Comment Date:* 5 p.m. ET on 11/28/2011.

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 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP11–2571–001.

*Applicants:* East Cheyenne Gas Storage, LLC.

*Description:* ECGS Compliance Filing to be effective 11/1/2011.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5122.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–85–001.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Amendment to RP12–85 to be effective 11/1/2011.
*Filed Date:* 11/16/2011.
*Accession Number:* 20111116–5043.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP11–1982–001.
*Applicants:* Trunkline Gas Company, LLC.
*Description:* Compliance with RP11–1982–000 to be effective 11/1/2011.
*Filed Date:* 11/17/2011.
*Accession Number:* 20111117–5064.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 29, 2011.

*Docket Numbers:* RP11–1983–001.
*Applicants:* Panhandle Eastern Pipe Line Company, LP.
*Description:* Compliance with RP11–1983–000 to be effective 11/1/2011.
*Filed Date:* 11/17/2011.
*Accession Number:* 20111117–5063.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, November 29, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 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, and service 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: November 17, 2011.

**Nathaniel J. Davis, Sr.**

*Deputy Secretary*

[FR Doc. 2011–30207 Filed 11–22–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## 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:* ER06–771–003; ER06–772–003.
*Applicants:* ExxonMobil Baton Rouge Complex.
*Description:* ExxonMobil Entities submits their Triennial Market-Power Filing for the Southeast Region.
*Filed Date:* 11/15/2011.
*Accession Number:* 20111115–5107.
*Comment Date:* 5 p.m. ET on 1/17/2012.

*Docket Numbers:* ER10–1934–001; ER10–1893–001; ER10–2036–002; ER10–1898–001; ER10–1889–001; ER10–1858–001; ER10–2044–002; ER10–1895–001; ER10–1870–001; ER10–2037–002; ER10–1942–003; ER10–2042–004; ER10–1944–001; ER10–2051–002; ER10–2043–002; ER10–2040–002; ER10–2039–002; ER10–2029–004; ER10–2041–002.
*Applicants:* Calpine Energy Services, L.P., Bethpage Energy Center 3, LLC, Calpine Construction Finance Company, LP,CES Marketing V, L.P.,CES Marketing X, LLC, Zion Energy LLC, Calpine Philadelphia Inc., CPN Bethpage 3rd Turbine, Inc., KIAC Partners, Nissequogue Cogen Partners, TBG Cogen Partners, CES Marketing IX, LLC, Calpine Mid-Atlantic Marketing, LLC, Calpine Bethlehem, LLC, Calpine Mid-Atlantic Generation, LLC, Calpine Mid Merit, LLC, Calpine New Jersey Generation, LLC, Calpine Vineland Solar, LLC, Calpine Newark, LLC.
*Description:* Supplement to Updated Market Power Analysis of Bethpage Energy Center 3, LLC, *et al.*
*Filed Date:* 11/15/2011.
*Accession Number:* 20111115–5133.
*Comment Date:* 5 p.m. ET on 12/6/2011.

*Docket Numbers:* ER11–3930–000; ER11–3935–000; ER11–3937–000; ER11–3936–000; ER11–3934–000; ER11–3932–000; ER11–3925–000; ER11–3931–000; ER11–3929–000; ER11–3928–000.
*Applicants:* Big Sky Wind, LLC, CL Power Sales Eight, L.L.C., CP Power Sales Seventeen, L.L.C., CP Power Sales Twenty, L.L.C., Edison Mission Marketing & Trading, Inc., Edison Mission Solutions, L.L.C., EME Homer City Generation, L.P., Forward WindPower, LLC, Lookout WindPower, LLC, Midwest Generation, LLC.
*Description:* The EME Northeast Companies submits Supplement to Triennial Market-Based Rate Update for the Northeast Region.
*Filed Date:* 11/15/2011.
*Accession Number:* 20111115–5184.
*Comment Date:* 5 p.m. ET on 12/6/2011.

*Docket Numbers:* ER11–4402–001.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Amendment to PJMs August 30, 2011 filing in ER11–4402 per Oct. 31, 2011 Order to be effective 11/1/2011.
*Filed Date:* 11/15/2011.
*Accession Number:* 20111115–5096.
*Comment Date:* 5 p.m. ET on 12/6/2011.

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 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: November 16, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–30208 Filed 11–22–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–419–000.
*Applicants:* Southern California Edison Company.
*Description:* Refile Letter Agreement for Casa Diablo 4 Project with Mammoth Pacific to be effective 8/14/2011.
*Filed Date:* 11/16/2011.
*Accession Number:* 20111116–5000.
*Comment Date:* 5 p.m. ET on 12/7/2011.

*Docket Numbers:* ER12–420–000.
*Applicants:* Consumers Energy Company.
*Description:* Cancellation of Facilities Agreement with MCV to be effective 10/1/2011.
*Filed Date:* 11/16/2011.
*Accession Number:* 20111116–5001.
*Comment Date:* 5 p.m. ET on 12/7/2011.

*Docket Numbers:* ER12–421–000.
*Applicants:* Heritage Garden Wind Farm I, LLC.
*Description:* Application for Market-Based Rate Authority to be effective 12/31/2011.

*Filed Date:* 11/16/2011.
*Accession Number:* 20111116–5055.
*Comment Date:* 5 p.m. ET on 12/7/2011.

*Docket Numbers:* ER12–422–000.
*Applicants:* New England Wind, LLC.
*Description:* 20111116 baseline to be effective 1/15/2012.
*Filed Date:* 11/16/2011.
*Accession Number:* 20111116–5065.
*Comment Date:* 5 p.m. ET on 12/7/2011.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RR12–1–000.
*Applicants:* North American Electric Reliability Corp.
*Description:* Petition for Approval of a Revision to the Rules of Procedure of the North American Electric Reliability Corporation—Correction to Section 1.3 of Appendix 4D.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5475.
*Comment Date:* 5 p.m. ET on 12/5/2011.

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 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: November 16, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–30209 Filed 11–22–11; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–9327–9]**

## Access to Confidential Business Information by Primus Solutions, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, Primus Solutions, Inc., (Primus) of Greenbelt, MD, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur on or about November 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8956; *fax number:* (202) 564–8955; *email address: moseley.pamela@epa.gov.*

*For general information contact:* The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *email address: TSCA–Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this notice apply to me?*

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

### II. What action is the agency taking?

Under EPA Contract Number EP–W–11–024, Task Order Number 22, contractor Primus of 6303 Ivy Lane, Suite 130, Greenbelt, MD, will assist the Office of Pollution Prevention and Toxics (OPPT) in managing the Confidential Business Information Center (CBIC), which is the centralized point of contact for TSCA CBI records and serves as the repository for these records. Primus will also receive, data enter, copy, track, and distribute records in accordance with the *TSCA CBI Protection Manual.*

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA Contract Number EP–W–11–024, Task Order Number 22, Primus will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Primus' personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Primus access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until October 2, 2016. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Primus' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

**List of Subjects**

Environmental protection, Confidential business information.

Dated: November 14, 2011.

**Mario Caraballo,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2011–30143 Filed 11–22–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9495–4]**

## Adequacy Status of Motor Vehicle Emissions Budgets in Submitted $PM_{10}$ Maintenance Plan for Sacramento County; CA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy.

**SUMMARY:** In this notice, EPA is notifying the public that the Agency has found that the motor vehicle emissions budgets (MVEBs) for particulate matter with an aerodynamic diameter of a nominal 10 microns or less ($PM_{10}$) for the years 2008, 2012, and 2022 in the $PM_{10}$ Implementation/Maintenance Plan and Redesignation Request for Sacramento County (October 28, 2010) (''Sacramento $PM_{10}$ Plan'') are adequate for transportation conformity purposes. The Sacramento $PM_{10}$ Plan was submitted to EPA on December 7, 2010 by the California Air Resources Board (CARB) as a revision to the California State Implementation Plan (SIP) and includes a maintenance plan for the 1987 24-hour $PM_{10}$ national ambient air quality standard. As a result of our adequacy findings, the Sacramento Area Council of Governments and the U.S. Department of Transportation must use the MVEBs for future conformity determinations.

**DATES:** This finding is effective December 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** John Ungvarsky, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 972–3963 or *ungvarsky.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to CARB on November 4, 2011 stating that the MVEBs in the submitted Sacramento $PM_{10}$ Plan for the years of 2008, 2012 and 2022 are adequate. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.* The adequate MVEBs are provided in the following table:

SACRAMENTO $PM_{10}$ PLAN MVEBS

[Winter season, tons per day]

| Budget year | Oxides of nitrogen | $PM_{10}$ |
|---|---|---|
| 2008 | 50 | 15 |
| 2012 | 38 | 15 |
| 2022 | 19 | 17 |

Receipt of the MVEBs in the Sacramento $PM_{10}$ Plan was announced on EPA's transportation conformity Web site on September 1, 2011. We received no comments in response to the adequacy review posting. The finding is available at EPA's transportation conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's MVEBs are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4) which was promulgated in our August 15, 1997 final rule (62 FR 43780, 43781–43783). We have further described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 final rule (69 FR 40004, 40038), and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

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

Dated: November 4, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011–30305 Filed 11–22–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2011–0877; FRL–9326–8]**

## Pesticides: Availability of Pesticide Registration Notice Regarding the Non-Dietary Exposure Task Force

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Agency is announcing the availability of a Pesticide Registration Notice (PR Notice) regarding the data development efforts of the Non-Dietary Exposure Task Force (NDETF). This PR Notice (PR Notice 2011–2) was issued by the Agency on November 10, 2011. PR Notices are issued by the Office of Pesticide Programs to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular PR Notice updates PR Notice 2000–7 that initially announced the formation of the NDETF. The updated Notice provides current information concerning the NDETF's development of data supporting pesticide registration, in which registrants may wish to participate.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Dumas, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8015; *fax number:* (703) 308–8005; *email address: dumasr.richard@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this notice if you register pesticide products intended for residential uses under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0877.

Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**II. What guidance does this PR notice provide?**

The Agency is announcing the issuance of Pesticide Registration Notice (PR–2011–2) that addresses the data development efforts of the NDETF. The formation of the NDETF was initially announced in PR Notice 2000–7 which was signed on August 4, 2000. When registering or periodically reviewing an existing registration, the Agency evaluates the potential risks to people from exposure to the pesticide in and around the home. The NDETF was formed to develop information on exposure to pesticides that can be used by EPA, and other regulatory agencies responsible for assuring the safety of pesticides. Since the initial notice in 2000, the membership of the task force has changed and the specific data needs have been better defined. The purpose of the PR Notice is to describe what data the NDETF has generated and plans to generate, to describe how EPA expects to use the data, and to inform registrants of the opportunity to join NDETF.

**III. Do PR Notices contain binding requirements?**

The PR Notice discussed in this notice is intended to provide information to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Pesticides and pests.

Dated: November 10, 2011.

**Steven Bradbury,**

*Director, Office of Pesticide Programs.*

[FR Doc. 2011–30141 Filed 11–22–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9496–1]**

## San Fernando Valley Area 2 Superfund Site; Notice of Proposed Prospective Purchaser Agreement Re: 4057 and 4059 Goodwin Avenue, Los Angeles, CA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** The EPA is hereby providing notice of a proposed prospective purchaser agreement (Agreement) concerning 4057 and 4059 Goodwin Avenue, Los Angeles, California (Property). The Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601, *et seq.,* and the authority of the Attorney General of the United States to compromise and settle claims of the United States. The Agreement provides for the prospective purchasers, Glendale/Goodwin Realty I, LLC, an Ohio limited liability company, The Kroger Co., an Ohio corporation, and Ralphs Grocery Company, an Ohio corporation, to purchase the Property and to conduct work to clean up soil contamination at the Property.

**DATES:** EPA will receive written comments relating to the settlement until December 23, 2011. EPA will consider all comments it receives during this period, and may modify or withdraw consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

A copy of the settlement document may be obtained by calling (415) 820–4700 and requesting a copy of the document.

**ADDRESSES:** Written comments should be addressed to Marie Rongone, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code ORC–3), San Francisco, California 94105–3901, or may be faxed to her at (415) 947–3570 or sent by email to *Rongone.Marie@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Additional information about the Prospective Purchaser Agreement for 4057 and 4059 Goodwin Avenue, Los Angeles, California, may be obtained by calling Marie Rongone at (415) 972–3891 or Lisa Hanusiak at (415) 972–3152.

Dated: November 8, 2011.

**Jane Diamond,**

*Director, Superfund Division, Region IX.*

[FR Doc. 2011–30252 Filed 11–22–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–1017; FRL—9327–2]**

## Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been canceled only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** Comments must be received on or before December 21, 2011.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Maia Tatinclaux.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions:* Direct your comments to docket ID number EPA–HQ–OPP–2009–1017. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:**

Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; email address: *tatinclaux.maia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel 28 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit. The cancellation of the two tralomethrin products, EPA Reg. Nos. 065092–00001 and 075015–00001 will be effective December 15, 2014 and are the last registered products containing this active ingredient.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| EPA Reg. No. | Product name | Active ingredients |
|---|---|---|
| 000239–02626 | Ortho Home Defense Hi-Power Brand Indoor Insect Fogger | MGK 264 Pyrethrins Permethrin. |
| 000499–00504 | TC 235 Cold Fogger Concentrate | MGK 264 Pyrethrins Piperonyl butoxide 2, 4-Dodecadienoic acid, 3,7,11-trimethyl-, ethyl ester, (S-(E,E))-. |
| 000655–00308 | Prentox Pyrethrum Extract ''25'' | Pyrethrins. |

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

| EPA Reg. No. | Product name | Active ingredients |
|---|---|---|
| 000769–00948 | Pratt Cygon 2–E Systemic Insecticide | Dimethoate. |
| 002724–00338 | Zoecon RF–275 | MGK 264 Piperonyl butoxide Pyrethrins S–Methoprene. |
| 002724–00607 | Farnam Pyrethrin Concentrate | Piperonyl butoxide Pyrethrins. |
| 002724–00706 | Elite Flea and Tick Dip | MGK 264 Piperonyl butoxide Pyrethrins. |
| 002724–00707 | Elite Extra-Strength Flea and Tick Dip | MGK 264 Piperonyl butoxide Pyrethrins. |
| 005887–00041 | Black Leaf Tri-Basic Bordeaux Powder | Basic copper sulfate. |
| 010807–00446 | Purge II | Pyrethrins Piperonyl butoxide. |
| 010807–00448 | Country Vet Flea & Tick Fogger with Growth Inhibitor | MGK 264 Pyrethrins Pyriproxyfen Permethrin. |
| 013283–00025 | Rainbow Flying & Crawling Bug Killer II | Bioallethrin. |
| 028293–00212 | Unicorn Ear Miticide III | Pyrethrins Piperonyl butoxide. |
| 028293–00348 | Unicorn Ear Miticide IV | Pyrethrins Piperonyl butoxide. |
| 040849–00046 | Enforcer Four Hour Fogger V | Phenothrin Tetramethrin. |
| 056156–00001 | X–100 Natural Seal Wood Preservative | 2-(Thiocyanomethylthio) benzothiazole Methylene bis (thiocyanate). |
| 065092–00001 | ZE LIN Chen Chalk | Tralomethrin. |
| 074965–00002 | Comet With Bleach Disinfectant Cleanser | Sodium dichloroisocyanurate dihydrate. |
| 075015–00001 | Dead-Fast Insecticide Chalk | Tralomethrin. |
| 080697–00009 | Chlorpyrifos Technical | Chlorpyrifos. |
| CA010009 | Supracide 25W | Methidathion. |
| CO080005 | Dicofol 4E | Dicofol. |
| FL760014 | Cythion Insecticide The Premium Grade Malathion | Malathion. |
| ID070002 | Dicofol 4E | Dicofol. |
| ID990018 | Kelthane MF Agricultural Miticide | Dicofol. |
| ME960001 | Imidan 2.5 EC | Phosmet. |
| SD040004 | Princep Caliber 90 | Simazine. |
| UT070005 | Dicofol 4E | Dicofol. |

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

| EPA company no. | Company name and address |
|---|---|
| 239 | The Scotts Company, P.O. Box 190, Marysville, OH 43040. |
| 499 | Whitmire Micro-Gen Research Laboratories, Inc. Agent: BASF CORP., 3568 Tree Court Industrial Blvd., St. Louis, MO 63122–6682. |
| 655 | Prentiss, Inc., Agent: Pyxis Regulatory Consulting, Inc., 4110 136th St. NW., Gig Harbor, WA 98332. |
| 769 | Value Gardens Supply LLC, P.O. Box 585, Saint Joseph, MO 64502. |
| 2724 | Wellmark International, 1501 E. Woodfield Rd., Suite 200, West Schaumburg, IL 60173. |
| 5887 | Value Gardens Supply, LLC, D/B/A Garden Value Supply, P.O. Box 585, Saint Joseph, MO 64502. |

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

| EPA company no. | Company name and address |
|---|---|
| 10807 | Amrep, Inc., Agent: Lewis & Harrison LLC, 122 C St. NW., Washington, DC 20001. |
| 13283 | Rainbow Technology Corporation, Agent: RegWest Company LLC, 8203 West 20th St., Suite A, Greeley, CO 80634–4696. |
| 28293 | Phaeton Corporation Agent Registrations By Design Inc., P.O. Box 1019, Salem, VA 24153. |
| 40849 | ZEP Commercial Sales & Service, Agent: Connie Welch and Associates, 4196 Merchant Plaza #344, Lake Ridge, VA 22192. |
| 56156 | American Building Restoration Products Inc., 9720 South 60th Street, Franklin, WI 53132. |
| 65092 | Ze Lin Chen 137, Casuda Canyon Dr. #A, Monterey Park, CA 91754. |
| 74965 | Spic And Span D/B/A Prestige Brands International, 90 North Broadway, Irvington, NY 10533. |
| 75015 | Bernard I. Segal, 2406 Vallecitos, La Jolla, CA 92037. |

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

| EPA company no. | Company name and address |
|---|---|
| 80697 | Zhejian Tide Cropscience Co. LTD, Agent: Tide International, USA, Inc., 21 Hubble, Irvine, CA 92618. |
| CA010009; ME960001. | Gowan Company, P.O. Box 5569, Yuma, AZ 85366–8844. |
| CO080005; ID070002; UT070005. | Makhteshim-Agan of North America Inc., 4515 Falls of Neuse Rd., Suite 300, Raleigh, NC 27069. |
| FL760014 | Lee County Mosquito Control District, P.O. Box 60005, Fort Myers, FL 33906. |
| ID990018 | Dow Agrosciences LLC, 9330 Zionsville Rd. 308/2E, Indianapolis, IN 46268–1054. |
| SD040004 | Syngenta Crop Protection LLC, D/B/A Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27149–8300. |

## III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register.**

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

## IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

## V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

*A. Registrations Listed in Table 1 of Unit II Except EPA Reg. Nos. 065092–00001 and 075015–00001*

EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

*B. EPA Registration Nos. 065092–00001 and 075015–00001*

The cancellation of these products will be effective December 15, 2014. Thereafter, registrants will be prohibited from selling or distributing these two pesticide products, except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 10, 2011.

**Peter Caulkins,**

*Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2011–29990 Filed 11–22–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (http://www.fmc.gov) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 012080–002.

*Title:* HMM/Hanjin Reciprocal Space Charter Agreement.

*Parties:* Hyundai Merchant Marine Co., Ltd. and Hanjin Shipping Co., Ltd.

*Filing Parties:* Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West 5th Street, 46th Floor; Los Angeles, CA 90013–1025 and David F. Smith, *Esq.;* Cozen O'Connor LLP; 1627 I Street NW.; Suite 1100; Washington, DC 20006–4007.

*Synopsis:* The amendment adds Korea to the geographic scope of the agreement and removes some historical references to services involved in the agreement.

*Agreement No.:* 012145.

*Title:* CKYH/MOL Space Charter and Sailing Agreement.

*Parties:* Cosco Container Lines Co., Ltd., Kawasaki Kisen Kaisha, Ltd., Yangming (UK) Ltd., Hanjin Shipping Co., Ltd., and Mitsui O.S.K. Lines, Ltd.

*Filing Party:* Robert B. Yoshitomi, Esquire, Nixon Peabody LLP, 555 West Fifth Street, 46 Floor, Los Angeles, CA 90013.

*Synopsis:* The agreement authorizes the parties to exchange space in the trade between China, Singapore, Vietnam and the U.S. East coast.

*Agreement No.:* 012146.

*Title:* HLAG/HSDG USWC–Mediterranean Vessel Sharing Agreement.

*Parties:* Hapag-Lloyd AG and Hamburg Sud DG.

*Filing Party:* Wayne R. Rohde, Esquire, Cozen O'Connor LLP; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

*Synopsis:* The agreement authorizes the parties to share vessel space in the trade between U.S. Pacific ports and ports in Spain, Italy, France, Morocco, Panama, Colombia, the Dominican Republic, Canada, and Mexico.

By Order of the Federal Maritime Commission.

Dated: November 17, 2011.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–30243 Filed 11–22–11; 8:45 am]

BILLING CODE P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

| License No. | Name/address | Date reissued |
|---|---|---|
| 019085N | Hanjin Logistics, Inc., 80 East Route 4, Paramus, NJ 07652 | October 16, 2011. |

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–30291 Filed 11–22–11; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

*License Number:* 3489F.
*Name:* McClellan, Lavone W. dba Acts Custom Brokers.
*Address:* 1386 Salford, Houston, TX 77032.
*Date Revoked:* October 28, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 018794N.
*Name:* Besco Shippers, Inc.
*Address:* 1543 Hook Road, Bldg A., Folcroft, PA 19032.
*Date Revoked:* October 26, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 021512F.
*Name:* LDC Import & Export Inc.
*Address:* 201 East Army Trail Road, Bloomingdale, IL 60108.
*Date Revoked:* October 27, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 022242N.
*Name:* Byasa Logistics LLC.
*Address:* 800 South Azusa Avenue, Suite 2–D, Azusa, CA 91702.
*Date Revoked:* October 28, 2011.
*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–30244 Filed 11–22–11; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

AE Eagle Logistics Inc. (NVO & OFF), 765 Route 83, Suite 111, Bensenville, IL 60106; *Officers:* Neal Lieu, Secretary/Treasurer (Qualifying Individual), Milton Cheung, President, Application Type: Add OFF Service.

Asecomer International Corporation dba Interworld Freight, Inc. dba Junior Cargo Inc. dba Intercontinental Lines Corp (NVO), 8225 NW 80 Street, Miami, FL 33166; *Officer:* John O. Crespo, President (Qualifying Individual), Application Type: Trade Name Change.

ATI Container Services, LLC (NVO & OFF), 11700 NW 36th Avenue, Miami, FL 33167; *Officers:* Claudia M. Hermo, President (Qualifying Individual), Carlos Hermo, Vice President, *Application Type:* New NVO & OFF License.

Bonaberi Shipping & Moving, Inc. (NVO & OFF), 6917 Kent Town Drive, Hyattsville, MD 20785; *Officers:* Tse E. Bangarie, President/Secretary/Treasurer (Qualifying Individual), Charles A. Nguti, Board Member, *Application Type:* New NVO & OFF License.

Damco A/S Inc. dba Damco dba Damco, Maritime dba Damco Sea and Air (NVO), 2 Giralda Farms Madison, NJ 07940; *Officers:* James Percival, Compliance Officer (Qualifying Individual), Rolf E. Habben-Jansen, Chairman, *Application Type:* New NVO License.

Daybreak Logistics, Inc. (NVO & OFF), 2804 N. Cannon Blvd., Kannapolis, NC 28083; *Officers:* Robert Lee Bare, Secretary/Treasurer (Qualifying Individual), Mary O. Bare, President *Application Type:* Name Change/QI change.

Interact Moving Services, Inc. (NVO). 11905 Sailboat Drive. Cooper City, FL 33026–1027; *Officer:* Maria I. Perugini, President (Qualifying Individual,) *Application Type:* New NVO License.

La Solucion Cargo Express Corp. (NVO), 3900 SW 52nd Avenue, Suite 401, Hollywood, FL 33023; *Officers:* Hermogenes R. Simo, President/Secretary (Qualifying Individual). *Application Type:* New NVO License.

Maromar International Freight Forwarders Inc. (OFF), 8710 NW 99 Street, Medley, FL 33178. *Officer:* Marta Barth, President/Secretary (Qualifying Individual), *Application Type:* New OFF License.

MBM International Logistics, LLC (NVO & OFF), 650 Atlanta South Parkway, Suite 104, Atlanta, GA 30349; *Officers:* Xiao Yan Mers, President/Secretary (Qualifying Individual), Harold Hagans, Vice President, *Application Type:* QI Change.

Pegasus Logistics Group, Inc. (NVO & OFF), 615 Freeport Parkway, Coppell, TX 75019; *Officer:* Kenneth C. Beam, President/Secretary/Treasurer (Qualifying Individual), Application Type: Add NVO Service.

Pink City Logistics USA LLC (NVO & OFF), 7 Emily Road, Manalapan, NJ 07726; *Officers:* Parveen Sharma, Manager (Qualifying Individual), Tanshu Sharma, President, *Application Type:* New NVO & OFF License.

Q Logistics, LLC (NVO), 2145 S 11th Avenue, #110, Phoenix, AZ 85007; Officer: Jason P. Quagliata, Member (Qualifying Individual), *Application Type:* New NVO License.

Stella Maris International Trading, Inc. (NVO & OFF), 3825 Henderson Boulevard, Suite 100, Tampa, FL 33629; *Officers:* Fernando Perez, Vice President/Secretary (Qualifying Individual), Nadya Ojeda-Perez, President/Treasurer, *Application Type:* Add OFF Service.

T–Link Logistics Inc. (NVO & OFF), 1520 Bridgegate Drive, Diamond Bar, CA 91765; *Officers:* Libang Song, Senior Executive Vice President (Qualifying Individual), Ming Wu, CEO/CFO/Secretary, *Application Type:* New NVO & OFF License.

Trans-Pak International, Inc. (OFF), 130 Produce Avenue, Suite H, S. San Francisco, CA 94080; *Officers:* Leilani Arendell, Chief Financial Officer (Qualifying Individual), Arleen Inch, President, *Application Type:* New OFF License.

Webgistix Corporation (OFF), 127 E. Warm Springs Road, Las Vegas, NV 89119; *Officer:* Joseph A. Disorbo, CEO/Pres/Dir/Treas/Sec. (Qualifying Individual), *Application Type:* New OFF License.

William B. Meyer, Incorporated (OFF), 255 Long Beach Blvd., Stratford, CT 06615; *Officers:* Chad M. Francis, VP, International Business Development (Qualifying Individual) Thomas M.

Gillon, President/CEO, *Application Type:* New OFF License.

Zfreight, Inc. (OFF), 432 Fishtail Terrace, Weston, FL 33327; *Officers:* Ismael G. Diaz, President (Qualifying Individual), Nestor Arguello, Vice President, *Application Type:* New OFF License.

Dated: November 18, 2011.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–30294 Filed 11–22–11; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities: Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), which are currently approved information collections. The Board is publishing this proposal on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the reports. The Board will then submit the reports to OMB for review and approval.

**DATES:** Comments must be submitted on or before January 23, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to the agency listed below. All comments will be shared among the agencies. You may submit comments, identified by FFIEC 002 (7100–0032), by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

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

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Additional information or a copy of the collections may be requested from Cynthia M. Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

### Proposal To Extend for Three Years With Revision the Following Currently Approved Collections of Information

*Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

*Form Numbers:* FFIEC 002; FFIEC 002S.

*OMB Number:* 7100–0032.

*Frequency of Response:* Quarterly.

*Affected Public:* U.S. branches and agencies of foreign banks.

*Estimated Number of Respondents:* FFIEC 002—237; FFIEC 002S—59.

*Estimated Time per Response:* FFIEC 002—25.57 hours; FFIEC 002S—6.0 hours.

*Estimated Total Annual Burden:* FFIEC 002—24,240 hours; FFIEC 002S—1,416 hours.

*General Description of Reports:* These information collections are mandatory: 12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4) and (8)].

*Abstract:* On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund (IMF) and the Bank for International Settlements (BIS) that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

*Current Actions:* The agencies propose to implement a limited number of revisions to the FFIEC 002 reporting requirements in 2012. These changes are intended to provide data needed for reasons of safety and soundness and other public purposes. The proposed changes would also help achieve consistency with revisions the agencies are proposing to make to the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031 and FFIEC 041) filed by insured banks and savings institutions. The proposed revisions to the FFIEC 002 summarized below have been approved for publication by the FFIEC. The agencies would implement the proposed changes for the June 30, 2012, reporting date.

**Discussion of Proposed Revisions to the FFIEC 002**

*A. Additional Detail on Trading Assets*

U.S. branches and agencies of foreign banks (branches) currently report ''other securities'' held for investment (*i.e.,* securities other than U.S. Government securities, mortgage-backed securities, and other asset-backed securities) in Schedule RAL, Assets and Liabilities, item 1.c.(1), Securities of foreign governments and official institutions, and Schedule RAL, item 1.c.(4), All other (bonds, notes, debentures, and corporate stock). However, branches currently report these ''other securities,'' when held for trading purposes, together with assets other than securities that are held for trading purposes, in Schedule RAL, item 1.f.(4), other trading assets. The agencies propose to collect a new item on Schedule RAL, for ''other securities'' held for trading purposes (new Schedule RAL, item 1.f.(4)). Current Schedule RAL, item 1.f.(4), Other trading assets, would be renumbered as item 1.f.(5) and would be defined to exclude all securities held for trading. The additional detail would allow the agencies to better monitor movements in other securities held for trading purposes over time, and provide for more meaningful analysis of the existing categories of trading assets.

*B. Loan Origination Data*

As highlighted by the recent financial crisis and its aftermath, the ability to assess credit availability is a key consideration for monetary policy, financial stability, and the supervision and regulation of the banking system. However, the information currently available to policymakers both within and outside the agencies is insufficient to accurately monitor the extent to which depository institutions are providing credit to households and businesses. In its current form, the FFIEC 002 report collects data on the amount of loans to both households and businesses that are outstanding on institutions' books at the end of each quarter. However, the underlying flow of loan originations cannot be deduced from these quarter-end data owing to the myriad of factors and banking activities that routinely affect the amount of outstanding loans held by institutions, including activities such as loan paydowns, extensions, purchases and sales, securitizations, and repurchases. Direct reporting of loan originations would allow the agencies to isolate the flow of credit creation from the effects of these other banking activities.

Economic research points to a crucial link between the availability of credit and macroeconomic outcomes.[1] For example, the rapid contraction in both total loans held on institutions' balance sheets and in credit lines held off their balance sheets in the volatile period following the collapse of Lehman Brothers in the fall of 2008 likely contributed to the depth of the economic recession as well as to the subsequent weakness in the recovery in economic activity. However, the lack of data on loan originations made it very difficult for policymakers to assess the sources of the steep declines in outstanding loans and credit lines during the recent crisis and in other periods of slow loan growth such as the early 1990s ''credit crunch.'' In fact, a fall in outstanding loans could be driven by reduced demand for credit, reduced supply of credit by banking organizations, or both. Looking only at changes in outstanding loan balances can give misleading signals and mask important shifts in the supply of, and demand for, credit. Policymakers may react differently in each of these cases.

The sources of loan growth—such as whether loans were made under commitment or not under commitment—also contain important insights for those monitoring financial stability or developing macroprudential regulatory policies.[2] As observed in the fall of 2008, strong loan growth that is driven primarily by customers drawing down funds from preexisting lending commitments can be a sign of stresses in financial markets, and therefore a signal that the economy could be slowing down. In contrast, strong growth in credit that includes robust extensions to new customers could signal a broad pickup in demand for financing and hence renewed economic growth, or it could suggest that institutions have eased their lending standards. Accordingly, rapid loan growth can be an important indicator of the safety and soundness of individual institutions.[3] Loan origination data, if collected from banking institutions, would better identify when such developments warrant greater supervisory scrutiny. Loan data currently available to the agencies provide insufficient detail to accurately monitor credit creation by banking institutions. The FFIEC 002 report currently collects data on the recorded amounts of a wide variety of loan categories in Schedule C, Loans. On Schedule S, Servicing, Securitization, and Asset Sale Activities, branches report the outstanding principal balance of seven categories of loans sold and securitized for which the institution has retained servicing or has provided recourse or other credit enhancements.[4] For these same seven loan categories, branches also report the unpaid principal balance of loans they have sold (but not securitized) with recourse or other seller-provided credit enhancements. No data exist for those loans that branches have sold without recourse or seller-provided credit enhancements when servicing has not been retained.

In contrast, savings associations currently report data on loan originations, sales, and purchases in the Thrift Financial Report (TFR) (OTS 1313; OMB No. 1550–0023). On TFR Schedule CF, Consolidated Cash Flow Information, savings associations report by major loan category the dollar amount of loans that were closed or disbursed, loans and participations purchased, and loan sales during the quarter. In addition, on TFR Schedule

[1] See, for example, A.K. Kashyap and J.C. Stein (2000), ''What Do a Million Observations on Banks Say About the Transmission of Monetary Policy,'' *The American Economic Review,* Vol. 90, No. 3, pages 407–428. See also Michael Woodford, ''Financial Intermediation and Macroeconomic Analysis,'' *Journal of Economic Perspectives,* Fall 2010, volume 24, issue 4, pages 21–44.

[2] Moritz Schularick and Alan M. Taylor, ''Credit Booms Gone Bust: Monetary Policy, Leverage Cycles and Financial Crises, 1870–2008,'' 2009, National Bureau of Economic Research, Inc., NBER Working Papers: 15512.

[3] William R. Keeton, ''Does Faster Loan Growth Lead to Higher Loan Losses?'' *Federal Reserve Bank of Kansas City Economic Review,* 2nd Quarter 1999, volume 84, issue 2, pages 57–75, and Deniz Igan and Marcelo Pinheiro, ''Exposure to Real Estate in Bank Portfolios,'' *Journal of Real Estate Research,* January–March 2010, volume 32, issue 1, pages 47–74.

[4] The seven categories are (1) 1–4 family residential mortgages, (2) home equity loans, (3) credit card loans, (4) auto loans, (5) other consumer loans, (6) commercial and industrial loans, and (7) all other loans, all leases, and all other assets (commercial real estate loans, for example, are subsumed in this category).

LD, Loan Data, savings associations report the amount of net charge-offs, purchases, originations, and sales of certain 1–4 family and multifamily residential mortgages with high loan-to-value ratios.[5]

The agencies propose to begin collecting data on loan originations from branches with total assets of $300 million or more because, as outlined in detail above, this information would be of substantial benefit in light of the fact that the data currently available for banking organizations are inadequate for monetary policy and financial stability regulators to monitor and analyze credit flows and because the proposed data will support the agencies' supervisory efforts.

More specifically, for branches with $300 million or more in total assets, the agencies propose to collect quarterly information on loan originations for several important loan categories by introducing a new Schedule U, Loan Origination Activity.[6] Under this proposal, all branches with $300 million or more in total assets would report in column A of Schedule U, for certain loan categories reported in Schedule C, Loans, the quarter-end balance sheet amount of those loans that were originated during the quarter that ended on the report date.[7] Branches with $1 billion or more in total assets would also report, for relevant loan categories, (1) The portion of this quarter-end amount that was originated under a newly established commitment[8] (column B of Schedule U) and (2) the portion that was not originated under a commitment (column C of Schedule U). In general, the additional data that would be reported in columns B and C of Schedule U by branches with $1 billion or more in total assets represent two ways that institutions originate new loans, both of which affect the amounts of loans on institutions' balance sheets.

In the proposed originations schedule, all branches with $300 million or more in total assets would report the amounts reported in Schedule C, Part I, as of the quarter-end report date that were originated during the quarter that ended on the report date for the following loan categories reported on a domestic office only basis:

- Construction, land development, and other land loans;
- Loans secured by multifamily (5 or more) residential properties;
- Loans secured by nonfarm nonresidential properties;
- Loans to commercial banks and other depository institutions in the U.S.;
- Loans to banks in foreign countries;
- Loans to other financial institutions;
- Commercial and industrial loans to U.S. addressees; and
- All other loans (as reported in Schedule C, Part I, item 8).

In addition, for each of the preceding loan categories, branches with $1 billion or more in total assets would separately disclose the portion of the quarter-end amount of loans originated during the quarter that was originated under a newly established commitment and the portion that was not originated under a commitment.

Loan originations that were made under a newly established commitment or a commitment that was renewed during the quarter are likely to more closely reflect the current lending standards and loan terms being applied by an institution, so an expansion or contraction in this subset of loans is indicative of current supply and demand conditions. In this regard, research has shown that loans not made under a commitment are more sensitive to changes in monetary policy than loans made under a commitment.[9] In contrast, loans drawn under previous commitments reflect lending standards and terms that were in place at the time the loan agreements were reached. Hence, changes in outstanding balances associated with previously committed lines are more indicative of demand for funds from the firms that have these lines, as institutions are less able to ration such credit.

As mentioned above, all savings associations, many of which are small, have for many years reported in the TFR the dollar amount of loans that were closed or disbursed, loans and participations purchased, and loan sales during the quarter by major loan category. Thus, the additional reporting burden of proposed FFIEC 002 Schedule U for branches with $300 million or more in total assets may be manageable for banking institutions. Nevertheless, because branches have not previously been required to report data pertaining to loan originations for FFIEC 002 reporting purposes, the agencies recognize that branches' data systems may not at present be designed to identify and capture data on loans originated during the quarter that ended on the report date. The agencies request comment on the ability of branches' existing loan systems to generate the data proposed for Schedule U. If this information is not currently available, the agencies request comment on how burdensome it would be to adapt current systems to report the proposed origination data for Schedule U. To the extent that existing loan systems enable branches to track data on loans originated during the quarter by loan category in a different manner than has been proposed, branches are invited to suggest alternative ways in which such origination data could be collected in the FFIEC 002 report and to explain how an alternative would meet the agencies' data needs as described above in this section.

**Paperwork Reduction Act Request for Comment**

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

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

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

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record.

[5] Savings associations will discontinue filing the TFR after the December 31, 2011, report date, which means that these data, as currently reported in the TFR, will no longer be collected going forward.

[6] Thus, branches with less than $300 million in total assets would be exempt from completing proposed Schedule U.

[7] For example, a loan was originated for $120,000 during the quarter. As a result of principal payments received during the quarter, the recorded amount of the loan as reported on the institution's balance sheet (Schedule RAL) and in the loan schedule (Schedule C) at quarter-end was $101,000. The institution would report the $101,000 quarter-end recorded amount for this loan in column A of proposed Schedule U. In general, in reporting amounts in column A, if a loan origination date is unknown, the reporting institution would be instructed to use the date that the loan was first booked by the institution.

[8] A newly established commitment is one for which the terms were finalized and the commitment became available for use during the quarter that ended on the report date. A newly established commitment also includes a commitment that was renewed during the quarter that ended on the report date.

[9] Donald P. Morgan, ''The Credit Effects of Monetary Policy: Evidence Using Loan Commitments,'' *Journal of Money, Credit and Banking,* Vol. 30, No. 1 (Feb. 1998), pages 102–118.

Board of Governors of the Federal Reserve System, November 17, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2011–30150 Filed 11–22–11; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0064; Docket 2011–0079; Sequence 18]**

## Federal Acquisition Regulation; Submission for OMB Review; Organization and Direction of Work

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning organization and direction of work. A notice published in the **Federal Register** at 76 FR 49483, on August 10, 2011. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before December 23, 2011

**ADDRESSES:** Submit comments identified by Information Collection 9000–0064, Organization and Direction of Work, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0064, Organization and Direction of Work'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0064, Organization and Direction of Work''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0064, Organization and Direction of Work'', on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 9000–0064, Organization and Direction of Work.

*Instructions:* Please submit comments only and cite Information Collection 9000–0064, Organization and Direction of Work, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis Glover, Procurement Analyst, Federal Acquisition Policy Division, GSA, telephone (202) 501–1448, or via email at *Curtis.Glover@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

When the Government awards a cost-reimbursement construction contract, the contractor must submit to the contracting officer and keep current a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The chart is used in the administration of the contract and as an aid in determining cost. The chart is used by contract administration personnel to assure the work is being properly accomplished at reasonable prices.

### B. Annual Reporting Burden

*Respondents:* 50.
*Responses per Respondent:* 1.
*Annual responses:* 50.
*Hours per Response:* .75.
*Total Burden Hours:* 38.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0064, Organization and Direction of Work, in all correspondence.

Dated: November 10, 2011.

**Laura Auletta,**

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2011–30221 Filed 11–22–11; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Request for Co-Sponsors for the Office of Healthcare Quality's Programs To Strengthen Coordination and Impact of National Efforts in the Prevention of Healthcare-Associated Infections; Correction

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of Healthcare Quality.

**ACTION:** Notice: Correction.

**SUMMARY:** The Department of Health and Human Services published a notice in the **Federal Register** on November 15, 2011 announcing a request for co-sponsors for the Office of Healthcare Quality's Program to Strengthen Coordination and Impact of National Efforts in the Prevention of Healthcare-Associated Infections. It was announced that the deadline for submission would be November 30, 2011. This deadline is being extended to allow interested applicants to submit their proposals.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel B. Gallardo, *Phone:* (202) 690–2470 *Fax:* (202) 401–9547.

### Correction

In the **Federal Register** of November 15, 2011, Vol. 76, No. 220, on page 70723, in the first column, correct the **DATES** caption to read:

Expressions of interest for FY 2011–12 must be received no later than close of business on December 9, 2011.

Dated: November 18, 2011.

**Don Wright,**

*Deputy Assistant Secretary for Healthcare Quality, Office of Healthcare Quality, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.*

[FR Doc. 2011–30287 Filed 11–22–11; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Assessing the Feasibility of Disseminating EHC Products through Educational Activities.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by January 23, 2012.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.* Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Proposed Project

*Assessing the Feasibility of Disseminating EHC Products Through Educational Activities*

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve under the Paperwork Reduction Act of 1995 this collection of information from users of products provided by the John M. Eisenberg Clinical Decisions and Communications Science Center (Eisenberg Center). Information collected consists of feedback from managers, instructors, and learners about these health care guides and other products presented as part of Continuing Medical Education activities.

AHRQ is the lead agency charged with supporting research designed to improve the quality of healthcare, reduce its cost, improve patient safety, decrease medical errors, and broaden access to essential services. AHRQ's Eisenberg Center's mission is improving communication of research findings to a variety of audiences (''customers''), including consumers, clinicians, and health care policy makers. The Eisenberg Center compiles research results into useful formats for customer stakeholders. The Eisenberg Center also conducts investigations into effective communication of research findings in order to improve the usability and rapid incorporation of findings into medical practice. The Eisenberg Center is one of three components of AHRQ's Effective Health Care (EHC) Program.

A primary goal of the Eisenberg Center is to translate results from systematic reviews of evidence comparing the effectiveness of two or more clinical care processes into information that can be used to support clinical decision-making. The major products of such efforts are brief guides designed for clinicians, patients, and policymakers that summarize the evidence concerning the effectiveness of various diagnostic and treatment processes. All of the guides and other products are designed to help decision makers, including clinicians and health care consumers, use research evidence to maximize the benefits of health care, minimize harm, and optimize the use of health care resources.

The collections proposed under this project include activities to assess the feasibility of disseminating EHC products through Continuing Medical Education (CME) activities, specifically those planned and implemented by member organizations of the Society of Academic Continuing Medical Education (SACME). SACME is an organization with members in both the U.S. and Canada formed in 1976 to ''promote the research, scholarship, evaluation and development of CME and Continuing Professional Development (CPD) that helps to enhance the performance of physicians and other healthcare professionals practicing in the United States, Canada, and elsewhere for purposes of improving individual and population health.''

For this project, the Eisenberg Center will work with six organizations selected from applications submitted by SACME members that had been invited to compete for funding. The Eisenberg Center selected sites based on the size of each organization's CME audience, the project's ability to inform the CME community, its degree of generalizability and replicability, and overall quality. Organizations selected for participation in the feasibility study have committed to specific activities designed to disseminate EHC Program summary guides to physicians, other clinicians, instructional faculty, and clinical researchers who participate in CME activities. Another partner in these efforts is the Association of American Medical Colleges (AAMC), which is assisting the project through access to MedEdPORTAL and CME4docs, two recently launched initiatives that are designed to encourage use of high quality CME resources by medical school faculty and others involved in development and delivery of CME.

This research has the following goals:

(1) Identify critical factors that enhance or impede integration of EHC products into CME activities;

(2) Assess strategies to remove, overcome, or work around barriers to integration of EHC products into CME programming with selected audiences;

(3) Confirm approaches that can be used in whole or in part to create and deliver effective CME instruction about EHC products (*e.g.,* clinician guides, consumer guides, faculty slide sets); and

(4) Review early educational program outcomes associated with integration of EHC products into CME activities.

This study is being conducted by AHRQ through its contractor, the Eisenberg Center—Baylor College of Medicine (EC–BMC), pursuant to AHRQ's statutory authority to conduct and support research, and disseminate information, on healthcare and on systems for the delivery of such care, including activities with respect to both the quality, effectiveness, efficiency, appropriateness and value of healthcare services and clinical practice. 42 U.S.C. 299a(a)(1) and (4).

### Method of Collection

To achieve the goals of this project the following activities and data collections will be implemented:

(1) *Interviews with CME Project Directors*—Semi-structured interviews will be conducted with the representative of each participating CME institution leading the development and implementation of the educational activities associated with the study. The director is typically, but not always, an expert physician. The interviews will be designed to: (a) Assess perceived feasibility and obtain feedback on strategies used to integrate EHC products into their planned CME activities involving varied content, instructional methods, and delivery formats; and b) characterize barriers and facilitators to the integration of EHC products into specific CME activities.

(2) *Focus Group with CME Project Directors*—A focus group will also be convened with the CME Project

Directors described above near the midpoint of the project to: (a) Obtain feedback on the perceived usefulness, currency and quality of the EHC products; and (b) explore the overall implications concerning CME activities as an avenue for disseminating EHC products.

(3) *Interviews with Faculty Members*—Semi-structured interviews will be conducted with clinicians who served as faculty in the CME activities associated with this study to: (a) Obtain perspectives on the quality, relevance, and utility of the resources that they accessed and integrated into their CME activities; (b) identify obstacles to the integration of EHC products into specific CME activities and contexts; and (c) identify additional tools or resources that could facilitate the integration of EHC content into CME activities.

(4) *Initial Survey Assessments of CME Participants*—Learner questionnaires will be administered to each clinician participating in a CME activity to determine the degree to which the learning activities with integrated EHC products affected educational outcomes such as levels of knowledge about specific clinical treatment issues and incorporation of new knowledge into clinical practice. The initial questionnaire will be distributed by paper or electronically at the immediate conclusion of participation in the CME activity.

(5) *Follow-up Survey Assessments of CME Participants*—A second questionnaire will be distributed electronically two months after each activity to each clinician learner and will be accessible through the Eisenberg Center Web site. An email message will be sent to invite participation and will include a link to the questionnaire. Gathering such data will provide a view of current awareness of EHC products and learners' intentions to use the products in practice as well as perceptions of barriers to implementation.

The collected data will be used to determine the feasibility of: (a) Including EHC products (*i.e.,* clinician guides, consumer guides, faculty slide sets) in CME activities that employ varied delivery modalities; and b) initiating additional studies to identify factors that promote effective integration of evidence-based content into educational activities. The data gathered from physicians and other clinical professionals who are participating in CME activities will foster understanding of the current state of awareness of and willingness to learn about results from comparative effectiveness research studies. The planned assessment approaches will promote better understanding of strategies that are most appropriate for use in incorporating comparativeness effectiveness research findings into CME activities, as well as understanding which strategies produce desired educational outcomes and are most acceptable to targeted learners—in this case clinical professionals. The information generated will be used in designing learning programs for delivery through the Eisenberg Center for Clinical Decisions and Communications Science and will be shared with others in the CME community through journal articles, Web-based publications, and scientific presentations.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in this research. Interviews will be conducted with each CME Project Director and will last about 30 minutes, while the focus group will last about 90 minutes. A maximum of 30 interviews will be conducted with CME faculty members. These are estimated to take 30 minutes to complete. The initial survey assessment of CME participant learners will take about 5 minutes to complete per questionnaire, as will the follow-up survey assessment. These questionnaires will be administered to the approximately 4,500 clinicians who will complete one of the study's CME activities. Each learner will be asked to complete both the initial and follow-up surveys.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Type of data collection | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Interviews with CME Project Directors | 10 | 1 | 30/60 | 5 |
| Focus Group with CME Project Directors | 10 | 1 | 1.5 | 15 |
| Interviews with Faculty Members | 30 | 1 | 30/60 | 15 |
| Initial Survey Assessment of CME Participants | 4,500 | 1 | 5/60 | 375 |
| Follow up Survey Assessment of CME Participants | 4,500 | 1 | 5/60 | 375 |
| Total | 9,050 | na | na | 785 |

Exhibit 2 shows the estimated annualized cost burden associated with the respondent's time to participate in this research. The total annual cost burden is estimated to be $65,233.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Type of data collection | Number of respondents | Total burden hours | Average hourly wage rate | Total cost burden |
|---|---|---|---|---|
| Interviews with CME Project Directors | 10 | 5 | * $64.31 | $322 |
| Focus Group with CME Project Directors | 10 | 15 | * 64.31 | 965 |
| Interviews with Faculty Members | 30 | 15 | ** 83.59 | 1,254 |
| Initial Survey Assessment of CME Participants | 4,500 | 375 | ** 83.59 | 31,346 |
| Follow up Survey Assessment of CME Participants | 4,500 | 375 | ** 83.59 | 31,346 |

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

| Type of data collection | Number of respondents | Total burden hours | Average hourly wage rate | Total cost burden |
|---|---|---|---|---|
| Total | 9,050 | 785 | na | 65,233 |

*Based upon the mean wages tor clinicians (29–1062 family and general practitioners health services managers (11–9111), National Compensation Survey: Occupational wages in the United States May 2010, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm.*

**Based upon the mean wages for clinicians (29–1062 family and general practitioners), National Compensation Survey: Occupational wages in the United States May 2010, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm.*

**Estimated Annual Cost to the Government**

Exhibit 3 shows the total and annualized cost by the major cost components. The maximum cost to the Federal Government is estimated to be $166,417 annually.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

| Cost component | Total cost | Annualized cost |
|---|---|---|
| Project Development | $110,846 | $55,423 |
| Data Collection Activities | 47,563 | 23,781 |
| Data Processing and Analysis | 38,250 | 19,125 |
| Project Management | 73,675 | 36,838 |
| Overhead | 62,500 | 31,250 |
| Total | 332,834 | 166,417 |

**Request for Comments**

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 10, 2011.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2011–30047 Filed 11–22–11; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, Office of Infectious Diseases: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, Office of Infectious Diseases, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period through October 31, 2013.

For information, contact Robin Moseley, M.A.T., Designated Federal Officer, Board of Scientific Counselors, Office of Infectious Diseases, CDC, HHS, 1600 Clifton Road, NE., Mailstop D10, Atlanta, Georgia 30333, telephone (404) 639–4461 or fax (404) 235–3562.

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.

Dated: November 15, 2011.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2011–30235 Filed 11–22–11; 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:* 9 a.m.–5 p.m., Eastern Time, December 19, 2011.

*Place:* Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018, *Telephone:* (859) 334–4611, *Fax:* (859) 334–4619.

*Status:* Open to the public, but without an oral public comment period. Written comments may be submitted. To access by conference call dial the following

information: 1 (866) 659–0537, Participant Pass Code 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, 2013.

*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 to be Discussed:* The agenda for the Subcommittee meeting includes: discussion of dose reconstruction cases under review (sets 7–10); DCAS dose reconstruction quality management and assurance activities; and dose reconstruction issues from NIOSH 10-year review.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

*Contact Person for More Information:* Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, 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.

Dated: November 17, 2011.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2011–30233 Filed 11–22–11; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Health and Nutrition Examination Survey (NHANES) DNA Samples

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notice.

**SUMMARY:** The National Health and Nutrition Examination Survey (NHANES) will not be receiving DNA proposals in 2012. NHANES is changing its plan for making DNA available for genetic research and its proposal guidelines. NHANES anticipates that the DNA Bank will be open for proposals approximately January 2013.

**DATES:** Effective date is date of publication in the **Federal Register.**

**ADDRESSES:** Geraldine McQuillan, PhD, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, *Phone:* (301) 458–4371, *Fax:* (301) 458–4028, *E–Mail: NHANESgenetics@cdc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782,

*Phone:* (301) 458–4371,

*Fax:* (301) 458–4028,

*E-Mail:* NHANESgenetics@cdc.gov.

**Juliana K. Cyril,**

*Deputy Director, Office of Science Quality, Office of the Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2011–30204 Filed 11–22–11; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Docket No. CDC–2011–0011]**

### Public Health Service Guideline for Reducing Transmission of Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV) Through Solid Organ Transplantation

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Extension of the public comment period.

**SUMMARY:** On September 21, 2011, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), published a notice in the **Federal Register** requesting public comment on the draft ''Public Health Service (PHS) Guideline for Reducing Transmission of Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV) through Solid Organ Transplantation'' (76 FR 58517). Written and electronic comments were to be received on or before November 21, 2011. However, HHS/CDC has received requests for a 30 day extension of the comment period. In consideration of those requests, HHS/CDC is extending the comment period by 30 days to December 23, 2011.

CDC also published a supporting document for reference, the *Evidence Report.* The *Evidence Report* includes primary evidence, studies, and data tables that were used by the *Guideline* authors in developing the recommendations in the *Guideline.*

The draft *Guideline* is for use by organ procurement organizations (OPOs); transplant centers, including physicians, nurses, administrators, and clinical coordinators; laboratory personnel responsible for testing and storing donor and recipient specimens; and persons responsible for developing, implementing, and evaluating infection prevention and control programs for OPOs and transplant centers. This *Guideline* provides evidence-based recommendations for reducing unexpected transmission of HIV, HBV and HCV from deceased and living organ donors.

**DATES:** Written comments must be received on or before December 23, 2011.

**ADDRESSES:** Written comments may be submitted electronically or by mail. To

download an electronic version of the Guideline, go to *http://www.regulations.gov, Docket CDC–2011–0011.* You may submit written comments electronically at this Web site. Please follow directions at *http://www.regulations.gov* to submit comments.

You may also submit written comments to the following *address:* Office of Blood, Organ and Other Tissue Safety, Division of Healthcare Promotion, National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention, (CDC), *Attn: Public Health Service Guideline for Reducing Transmission of Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV) and Hepatitis C Virus (HCV) through Solid Organ Transplantation,* Docket No. CDC–2011–0011, 1600 Clifton Rd, NE., Mailstop A–07, Atlanta, Georgia, 30333. All written materials identified will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Standard Time, at 1600 Clifton Road, NE., Atlanta, Georgia 30333. Please call ahead to (404) 639–4000 and ask for a representative from the Office of Blood, Organ and Other Tissue Safety to schedule your visit. All relevant comments received will be posted publicly at this Web site without change, including any personal or proprietary information.

**FOR FURTHER INFORMATION CONTACT:** Debbie Seem, Division of Healthcare Quality Promotion, National Center for Emerging and Zoonotic Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A–07, Atlanta, Georgia, 30329–4018; *Telephone:* (404) 639–4000.

**SUPPLEMENTARY INFORMATION:** Since 2008, HHS/CDC has collaborated with state and federal agencies, national partners, academicians, public and private health professionals, the transplant field, public health organizations, and other partners to revise and expand the 1994 *Guidelines for Preventing Transmission of Human Immunodeficiency Virus (HIV) through Transplantation of Human Tissue and Organs.* The 2011 draft Guideline updates the previous recommendations about HIV and also includes recommendations to reduce disease transmission of HBV and HCV, and addresses issues such as donor risk assessment, donor screening, HBV- and HCV-infected donors and transplantation, recipient informed consent, recipient screening, donor and recipient specimen collection and storage, and tracking and reporting of HIV, HBV, and HCV.

As with the 1994 *Guideline,* the recommendations address adult and pediatric donors who are living or deceased, as well as transplant candidates and recipients. In addition to summarizing current scientific knowledge about solid organ transplant safety, the draft 2011 *Guideline* also identifies important gaps in the literature where further research is needed.

HHS/CDC worked with the University of Pennsylvania's Health System Center for Evidence-based Practice (CEP) and sought input in each phase of the *Guideline's* development from subject matter experts in HIV and hepatitis through formation of a *Guideline* Expert Panel to develop the new *Guideline.* HHS/CDC also formed a *Guideline* Review Committee to provide feedback on the draft *Guideline* recommendations. Members of the Review Committee included representation from public health, regulatory, transplant infectious disease and other stakeholders. This new Draft Guideline will not be a federal rule or regulation.

**Juliana K. Cyril,**

*Deputy Director, Office of Science Quality, Office of the Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2011–30205 Filed 11–22–11; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Statement of Organization, Functions, and Delegations of Authority; Administration on Developmental Disabilities

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Notice.

**SUMMARY:** Statement of Organization, Functions, and Delegations of Authority. The Administration for Children and Families (ACF) has reorganized the Office of the Assistant Secretary (OAS) and the Administration on Developmental Disabilities (ADD). This reorganization realigns the President's Committee for People with Intellectual Disabilities Staff within the OAS and moves the function to ADD as a result of the Charter Amendment for PCPID governed by Public Law 92–463 signed by the Secretary, HHS, on May 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Sharon Lewis, Commissioner, Administration on Developmental Disabilities, 200 Independence Avenue SW., Washington, DC 20201, (202) 690–6590.

This notice amends Part K of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) as follows: Chapter KA, Office of the Assistant Secretary (OAS) last amended, 75 FR 60471–60473, September 30, 2010, and Chapter KC, Administration on Developmental Disabilities (ADD) last amended 75 FR 63186–63187, October 14, 2010.

**I. Under Chapter, KA, Amend the Office of the Assistant Secretary as Follows**

A. Delete KA.10 Organization in its entirety and replace with the following: KA.10 Organization. The Office of the Assistant Secretary for Children and Families is headed by the Assistant Secretary for Children and Families who reports directly to the Secretary and consists of:

Office of the Assistant Secretary for Children and Families (KA)
Executive Secretariat Office (KAF)
Office of Human Services Emergency Preparedness and Response (KAG)
Office of the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development (KAH)

B. Delete KA.20 Functions B in Its entirety.

**II. Under Chapter, KC, Administration on Developmental Disabilities, Delete in Its Entirety and Replace With the Following**

KC.00 Mission. The Administration on Developmental Disabilities (ADD) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to individuals with developmental disabilities and their families. ADD serves as the focal point in the Department to support and encourage the provision of quality services to individuals with developmental disabilities and their families. ADD assists states, through the design and implementation of a comprehensive and continuing state plan, in increasing the independence, productivity and community inclusion of individuals with developmental disabilities. These state plans make optimal use of existing Federal and state resources for the provision of services and supports to these individuals and their families to achieve these outcomes. ADD works

with the states to ensure that the rights of all individuals with developmental disabilities are protected.

ADD administers two formula grant programs, State Developmental Disabilities Councils and Protection and Advocacy Systems, and two discretionary grant programs, University Affiliated Programs and Projects of National Significance, including Family Support. These programs support the provision of services to individuals with developmental disabilities and their families. In concert with other components of ACF as well as other public, private, and voluntary sector partners, ADD develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of individuals with developmental disabilities. In addition, ADD serves as a resource in the development of policies and programs to reduce or eliminate barriers experienced by individuals with developmental disabilities through the identification of promising practices and dissemination of information. ADD supports and encourages programs or services, which prevent developmental disabilities and manages initiatives involving the private and voluntary sectors that benefit individuals with developmental and other disabilities and their families.

ADD provides staff and administrative support to the President's Committee for People with Intellectual Disabilities (Committee). In order to promote full participation of people with intellectual disabilities in their communities, the Committee provides advice to the President and to the Secretary of Health and Human Services (Secretary) through the Commissioner of ADD concerning a broad range of topics relating to people with intellectual disabilities.

KC.10 Organization. The Administration on Developmental Disabilities (ADD) is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families. ADD consists of:

Office of the Commissioner (KCA)
President's Committee for People with Intellectual Disabilities (KCA1)
Office of Program Support (KCB)
Office of Innovation (KCC)

KC.20 Functions. A. The Office of the Commissioner provides executive leadership and management strategies for all components of the Administration on Developmental Disabilities (ADD), and serves as the principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other elements of the Department for individuals with developmental disabilities and their families. The Office plans, coordinates and controls ADD policy, planning and management activities which include the development of legislative proposals, regulations and policy issuances for ADD. The Office provides executive direction, leadership, and management strategy to ADD's components and establishes goals and objectives for ADD programs. The Office manages the formulation and execution of the program and operating budgets; provides administrative, personnel and information systems support services; serves as the ADD Executive Secretariat controlling the flow of correspondence; and coordinates with appropriate ACF components in implementing administrative requirements and procedures. The Office also initiates, executes and supports the development of interagency, intergovernmental and public-private sector agreements, committees, task forces, commissions or joint-funding efforts as appropriate.

The President's Committee for People with Intellectual Disabilities (PCPID) staff provides general staff support for a Presidential-level advisory body. It coordinates all meetings and Congressional hearing arrangements; provides such advice and assistance in the areas of intellectual disabilities as the President, the Secretary or the Commissioner may request and prepares and issues reports to the President concerning intellectual disabilities. It works with other Federal, State, local governments, and private-sector organizations to achieve Presidential goals related to intellectual disabilities, and develops and disseminates information to increase public awareness of intellectual disabilities. The staff supporting PCPID reports to the Commissioner of ADD. In coordination with the ACF Office of Public Affairs, the Office of the Commissioner develops a strategy for increasing public awareness of the needs of individuals with developmental disabilities, their families, and programs designed to address them. The Deputy Commissioner assists the Commissioner in carrying out the responsibilities of the Office.

B. The Office of Program Support is responsible for the coordination, oversight, management and evaluation of the State Councils on Developmental Disabilities, the Protection and Advocacy Systems, and the University Centers for Excellence in Developmental Disabilities grant programs as authorized by the Developmental Disabilities Assistance and Bill of Rights Act (DD Act). The Office is responsible for the development of procedures and performance standards that ensure compliance with the DD Act and that improve the outcomes of the programs in increasing the independence, productivity and community inclusion of persons with developmental disabilities as well as program outreach activities. The Office conducts routine and special analyses of state plans of State Councils on Developmental Disabilities, statement of goals and objectives of State Protection and Advocacy Systems, and five-year plans of the University Centers for Excellence in Developmental Disabilities, to assure consistent application of ADD program goals and objectives.

In addition, the Office of Program Support provides program development services, develops and initiates guidelines, policy issuances and actions with team participation by other components of ADD, ACF, HHS and other government agencies to fulfill the mission and goals of the DD Act, as amended. The Office ensures the dissemination of grantee results, including project results and information produced by ADD grantees, by coordinating with the Office of Innovation and the Office of the Commissioner for information sharing.

The Office of Program Support manages cross-cutting initiatives with other components of ADD, ACF, HHS and other government agencies to promote and integrate the grant programs into cross-agency and cross-disability efforts.

C. The Office of Innovation is responsible for the coordination, oversight, management and evaluation of the Projects of National Significance, Family Support, and the Direct Support Workers grant programs as authorized by the Developmental Disabilities Assistance and Bill of Rights Act (DD Act). The Office is responsible for the development of procedures that ensure compliance with the DD Act and that improve the outcomes of the programs, grants and contracts in increasing the independence, productivity and community inclusion of persons with developmental disabilities. The Office also ensures the dissemination of project results and information produced by ADD grantees.

The Office of Innovation also administers two formula grants under the Help America Vote Act (State and Local Grants for Election Assistance for Individuals with Disabilities and Grants to Protection and Advocacy Systems) that improve accessibility for individuals with the full range of disabilities, including the blind and

visually impaired, to polling places, including the path of travel, entrances, exits and voting facilities. The Office also administers a training and technical assistance grant program under the Help America Vote Act that provides technical assistance to Protection and Advocacy Systems in their mission to promote the full participation in the electoral process for individuals with the full range of disabilities, including registering to vote, casting vote, and accessing polling places.

The Office of Innovation originates and manages cross-cutting research, demonstration and evaluation initiatives with other components of ADD, ACF, HHS and other government agencies. The Office also coordinates information sharing and other activities related to national Developmental Disability program trends with other ACF programs and HHS agencies; and studies, reviews and analyzes other Federal programs providing services applicable to persons with developmental disabilities for the purpose of integrating and coordinating program efforts.

### III. Continuation of Policy

Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to organizational components affected by this notice within the Administration for Children and Families, heretofore issued and in effect on this date of this reorganization are continued in full force and effect.

### IV. Delegation of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

### V. Funds, Personnel, and Equipment

Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies, and other resources.

This reorganization will be effective upon date of signature.

Dated: November 10, 2011.

**George H. Sheldon,**

*Acting Assistant Secretary for Children and Families.*

[FR Doc. 2011–30176 Filed 11–22–11; 8:45 am]

**BILLING CODE 4184–06–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0439]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food and Drug Administration Recall Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by December 23, 2011.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* (202) 395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0249. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–5156, *Daniel.Gittleson@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### FDA Recall Regulations—(OMB Control Number 0910–0249)—Extension

Section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371) and part 7 (21 CFR part 7), subpart C set forth the recall regulations (guidelines) and provide guidance to manufacturers on recall responsibilities. The guidelines apply to all FDA regulated products (*i.e.,* food, including animal feed; drugs, including animal drugs; medical devices, including in vitro diagnostic products; cosmetics; biological products intended for human use; and tobacco). These responsibilities include development of a recall strategy that requires time by the firm to determine the actions or procedures required to manage the recall (§ 7.42); providing FDA with complete details of the recall including reason(s) for the removal or correction, risk evaluation, quantity produced, distribution information, firm's recall strategy, a copy of any recall communication(s), and a contact official (§ 7.46); notifying direct accounts of the recall, providing guidance regarding further distribution, giving instructions as to what to do with the product, providing recipients with a ready means of reporting to the recalling firm (§ 7.49); and submitting periodic status reports so that FDA may assess the progress of the recall. Status report information may be determined by, among other things, evaluation return reply cards, effectiveness checks, and product returns (§ 7.53); and providing the opportunity for a firm to request in writing that FDA terminate the recall (§ 7.55(b)).

A search of the FDA database was performed to determine the number of recalls, and terminations that took place during fiscal years (FYs) 2008 to 2010. The resulting number of total recalls (9,303) and terminations (2,858) from this database search were then averaged over the 3 years, and the resulting per year average of recalls (3,101) and terminations (953) are used in estimating the current annual reporting burden for this report. FDA estimates the total annual industry burden to collect and provide the previous information to be 443,820 burden hours.

The following is a summary of the estimated annual burden hours for recalling firms (manufacturers, processors, and distributors) to comply with the voluntary reporting requirements of FDA's recall regulations recognizing that there may be a vast difference in the information collection and reporting time involved in different recalls of FDA's regulated products.

The annual reporting burdens are explained as follows:

### I. Total Annual Reporting

*A. Recall Strategy*

Request firms develop a recall strategy including provision for public warnings and effectiveness checks. Under this portion of the collection of information, the Agency estimates it will receive 3,101 responses annually based on the average number of recalls over the last 3 FYs.

*B. Firm Initiated Recall and Recall Communications*

Request firms voluntarily remove or correct foods and drugs (human or animal), cosmetics, medical devices,

biologics, and tobacco to immediately notify the appropriate FDA district office of such actions. The firm is to provide complete details of the recall reason, risk evaluation, quantity produced, distribution information, firms' recall strategy, and a contact official as well as requires firms to notify their direct accounts of the recall and to provide recipients with a ready means of reporting to the recalling firm. Under these portions of the collection of information, the Agency estimates it will receive 3,101 responses annually based on the average number of recalls over the last 3 FYs.

*C. Recall Status Reports*

Request that recalling firms provide periodic status reports so FDA can ascertain the progress of the recall. This request only applies to firms with active recalls, and is estimated to be reported every 2 to 4 weeks. This collection of information will generate approximately 27,924 responses annually, based on the average number of recalls over the last 3 FYs (3,101), less the average number of terminations over the last 3 FYs (953), multiplied by the conservative frequency of reporting per year (13).

*D. Termination of a Recall*

Provide the firms an opportunity to request in writing that FDA end the recall. The Agency estimates it will receive 953 responses annually based on the average number of terminations over the past 3 FYs.

**II. Hours per Response Estimates**

FDA has no information that would allow it to make a calculated estimate on the hours per response burden to FDA regulated firms to conduct recalls. Variables in the type of products, the quantity and level of distribution, and the various circumstances of recall notifications could cause the hours per response to vary significantly. The best guesstimate of average burden hours per response from previous information collection request reports are utilized again for the current estimates on burden hours per response.

In the **Federal Register** of June 29, 2011 (76 FR 38184), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received and was PRA related.

(Comment) One comment noted that the FDA Average Burden per Response (ABPR) are low. The commenter's estimates are double the estimates provided by FDA.

(Response) FDA regulates many different types of products including, but not limited to, medical products, food and feed, cosmetics, and tobacco products. From FYs 2008 to 2010, FDA classified approximately 9,303 recalls of FDA-regulated products. Further, FDA notes that not all recall events reported to the Agency are similar in nature and may entail different information and volume of information on a case-by-case basis. Therefore, FDA could not calculate or determine an estimate for the average burden per response for a particular or specific product type or area and has based its estimates for all industries that it regulates.

(Comment) One comment questioned the validity of the methodology and assumption used by FDA, citing that data ranges are not given. The comment encouraged FDA to provide data ranges for industry to assess better the accuracy of the Agency's estimates.

(Response) As stated in the prior response, FDA regulates many different types of products including, but not limited to, medical products, food and feed, cosmetics, and tobacco products. From FY 2008 to 2010, FDA classified approximately 9,303 recalls of FDA-regulated products. Further, FDA notes that not all recall events reported to the Agency are similar in nature where complexity and size of the recall can dictate the amount of recall information and data to be submitted. Therefore, FDA could not provide ranges of the burden for data collection for industry and based its estimates across the entire scope of recalls of FDA-regulated products.

(Comment) One comment suggests that the Agency develop an electronic tool for recall reporting or ''eRecall'' tool, and ask, that industry be able to provide input to any developer of user requirements for such a tool before implementations.

(Response) FDA will consider the suggestion of an electronic recall tool for reporting. However, because of the many types of industries that FDA regulates, such a tool may not be able to accommodate the variety of information specific to many of these industries.

(Comment) One comment suggests that recall requirements should apply only to finished goods that are consumable and that FDA's entire recall program, not just information collection, be reviewed to determine if the program serves the purpose originally intended to protect consumers.

(Response) FDA disagrees with the comment. FDA believes that violative products in the marketplace should be recalled from consignees and customers who received them even if they are not finished goods that are consumables. For example, a recall of a violative product which is used for further manufacture and that poses a health risk would also serve as notification to consignees and customers to remove the recalled product from further use or distribution, including providing instructions for additional recall of products that may have been manufactured using the recalled products.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR Section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Recall Strategy (§ 7.42) | 3,101 | 1 | 3,101 | 20 | 62,020 |
| Firm Initiated Recall and Recall Communications (§§ 7.46 & 7.49) | 3,101 | 1 | 3,101 | 30 | 93,030 |
| Recall Status Reports and Followup (§ 7.53) | 2,148 | 13 | 27,924 | 10 | 279,240 |
| Termination of a Recall (§ 7.55(b)) | 953 | 1 | 953 | 10 | 9,530 |
| Total | | | | | 443,820 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 17, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–30146 Filed 11–22–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–D–0784]**

### Draft Guidance for Industry on Evaluating the Effectiveness of Anticoccidial Drugs in Food-Producing Animals; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of draft guidance for industry #217 entitled ''Evaluating the Effectiveness of Anticoccidial Drugs in Food-Producing Animals.''

The draft guidance, when finalized, is intended to provide guidance to industry for designing and conducting clinical effectiveness studies, and describes criteria that the Center for Veterinary Medicine (CVM) thinks are the most appropriate for the evaluation of the effectiveness of anticoccidial drugs intended for use in poultry and other food-producing animals. The draft guidance also suggests times during the evaluation of effectiveness when sponsors may wish to consult with CVM.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by January 23, 2012.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Emily R. Smith, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, (240) 276–8344, *emily.smith2@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA is announcing the availability of draft guidance for industry #217 entitled ''Evaluating the Effectiveness of Anticoccidial Drugs In Food-Producing Animals.'' The draft guidance discusses general considerations for the evaluation of the efficacy of anticoccidial drugs in poultry, minor species and food-producing mammals. Draft guidance for industry #217 supersedes the CVM draft guidance for industry #40, entitled ''Draft Guideline for the Evaluation of The Efficacy of Anticoccidial Drugs and Anticoccidial Drug Combinations in Poultry,'' dated April 1992.

This draft guidance discusses general considerations regarding protocol development, study conduct, animal welfare, substantial evidence of effectiveness, feed preparation, drug assays, and combination approvals.

This draft guidance discusses CVM considerations for studies used to substantiate effectiveness of anticoccidial drugs in poultry, including battery studies and commercial field studies. In addition, the draft GFI discusses CVM considerations for studies used to substantiate effectiveness of anticoccidial drugs in food-producing mammals, in minor species, and for minor uses.

#### II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on evaluating the effectiveness of anticoccidial drugs in food-producing animals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

#### III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance have been approved under OMB control nos. 0910–0032 and 0910–0117.

#### IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

#### V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: November 17, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–30149 Filed 11–22–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0002]**

### Tobacco Products Scientific Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Tobacco Products Scientific Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on January 18, 2012, from 8 a.m. to 5 p.m., on January 19, 2012, from 8 a.m. to 5 p.m., and on January 20, 2012, from 8 a.m. to 4 p.m.

*Location:* Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1 (877) 287–1373.

*Contact Person:* Caryn Cohen, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–(877) 287–1373 (choose option 4), *email: TPSAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–(800) 741–8138 ((301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda:* As part of the Tobacco Products Scientific Advisory Committee's required report to the Secretary of Health and Human Services, the committee will continue discussing issues related to the nature and impact of the use of dissolvable tobacco products on the public health, including such use among children. Discussion will include such topics as the composition and characteristics of dissolvable tobacco products, product use, potential health effects, and marketing.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

*Procedure:* On January 18, 2012, from 2 p.m. to 5 p.m., on January 19, 2012, from 8 a.m. to 5 p.m., and on January 20, 2012 from 8 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 4, 2012. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. on January 19, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 27, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 28, 2011.

*Closed Committee Deliberations:* On January 18, 2012, from 8 a.m. to 1 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). This portion of the meeting must be closed because the Committee will be discussing trade secret and/or confidential data regarding products provided by the tobacco companies.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caryn Cohen at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 16, 2011.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2011–30163 Filed 11–22–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0780]**

### Bridging the Idea Development Evaluation Assessment and Long-Term Initiative and Total Product Life Cycle Approaches for Evidence Development for Surgical Medical Devices and Procedures; Public Workshop; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Monday, November 7, 2011 (76 FR 68769). The document announced a public workshop entitled ''Bridging the Idea Development Evaluation Assessment and Long-Term Initiative and Total Product Life Cycle Approaches for Evidence Development for Surgical Medical Devices and Procedures.'' The document was published with an incorrect docket number. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3208, Silver Spring, MD 20993–0002, (301) 796–9148.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2011–28722, appearing on page 68769, in the **Federal Register** of Monday, November 7, 2011, the following correction is made:

On page 68769, in the first column, in the Docket No. heading, ''[Docket No. FDA 2011–N–0002]'' is corrected to read ''[Docket No. FDA–2011–N–0780]''.

Dated: *November 17, 2011.*

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–30145 Filed 11–22–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information

collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: National Sample Survey of Nurse Practitioners (OMB No. 0915–xxxx)—[New]**

The number of nurse practitioners (NP) in the United States has been growing rapidly over the past decade, and continued growth is expected as the annual number of graduates from NP programs is at an all time high. Furthermore, over the past 20 years, financial and regulatory changes have impacted the growth in NPs. The expansion of health insurance under the ''Patient Protection and Affordable Care Act'' (Pub. L. 111–148) will have an impact on the demand for services. With increasing numbers, NPs are poised to play a critical role in the nation's efforts to expand access to health care services.

Despite the increasing number and roles of NPs, unfortunately, there are currently only limited, inconsistent data available to policy makers and the health care community. Accordingly, it is difficult for these leaders to quantify or fully understand the role of NPs in the current (or future projected course of the) health care system. In fact, it is difficult to estimate with confidence the number of NPs practicing in the U.S. today.

The primary purpose of the Bureau of Health Profession's National Sample Survey of Nurse Practitioners data collection is to: (1) Improve estimates of NPs providing services; (2) describe the settings where NPs are working; (3) identify the positions/roles in which NPs are working; (4) describe the activities and services NPs are providing in the healthcare workforce; (5) determine the specialties in which NPs are working; (6) explore NPs' satisfaction with and perception of the extent to which they are working to their full scope of practice; and (7) assess variations in practice settings, positions, and practice patterns by demographic and educational characteristics.

The statutory provision that authorizes this data collection is section 761(b) of the Public Health Service Act, ''National Center for Health Care Workforce Analysis,'' which is codified at 42 U.S.C. 294n(b). The information obtained from this survey will ultimately lead to more accurate and complete national estimates of the current NP supply as well as assist in the development of more accurate NP supply and demand projections.

The annual estimate of burden is as follows:

| Instrument | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| National Sample Survey of Nurse Practitioners | 14,300 | 1 | 14,300 | .33 | 4,719 |
| Total | 14,300 | | 14,300 | | 4,719 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: November 17, 2011.

**Reva Harris,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2011–30214 Filed 11–22–11; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request Information Program on the Genetic Testing Registry

**AGENCY:** National Institutes of Health (NIH), PHS, DHHS.

**ACTION:** Request for comments

**SUMMARY:** Under the provisions of Section 3507(a) (1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 27, 2011, (76 FR 44937) and allowed 60 days for public comment. Twelve public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* The Genetic Testing Registry; *Type of Information Collection Request:* New collection; *Need and Use of Information Collection:* Laboratory tests for more than 2,000 genetic conditions are available; however, there is no centralized public resource that provides information about the availability and scientific basis of these tests.

Recognizing the importance of making this information easily accessible to health care providers, patients, consumers, and others, NIH is developing a voluntary registry of genetic tests. The Genetic Testing Registry (GTR) will provide a centralized, online location for test developers, manufacturers, and researchers to submit detailed information about genetic tests. The overarching goal of the GTR is to advance the public health and research in the genetic basis of health and disease. As such, the Registry will have several key functions, including (1) Encouraging providers of genetic tests to enhance transparency by publicly sharing information about the availability and utility of their tests; (2) providing an information resource for the public, including health care providers, patients, and researchers, to locate laboratories that offer particular tests; and (3) facilitating genetic and genomic data-sharing for research and new scientific discoveries.

*Frequency of Response:* The information will be submitted voluntarily on a non-repeating, continual basis. Submitters will be requested to update their test information at least once every 12 months.

*Respondents:* Submitters to the GTR are expected to include clinical laboratories, researchers, and entities that report and interpret tests performed elsewhere. The GTR is not limited to U.S. respondents; it will also include submissions from outside the United States. Information will be collected and managed using an online submission system.

*Estimate of Burden:* Although participation in the GTR is voluntary, in order to participate, respondents must provide information for a certain subset of fields, identified as the ''minimal fields.'' GTR includes 31 minimal fields and 85 optional fields. Sixteen of the 31 minimal fields refer to contact data and other information about the laboratory, which the respondent completes only once. These data will autopopulate new test records, leaving 15 minimal fields that require completion. The GTR will also support bulk submission as an XML file or uploading subsets of information from spreadsheets, which will significantly reduce the burden for laboratories that want to provide information on multiple genetic tests. The annualized cost to respondents is estimated at $1,103.

ESTIMATES OF HOUR BURDEN

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Laboratory Personnel | 770 | 12 | Minimal Fields: 0.5<br>Optional Fields: 2.5 | Minimal Fields: 4,620.<br>Optional Fields: 23,100. |
| Total | 770 | | 3.0 | 27,720. |

*Request For Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974, *Attention:* Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instrument, contact: Amy P. Patterson, M.D., Associate Director for Science Policy, NIH, by mail to the Office of Biotechnology Activities, 6705 Rockledge Dr., Suite 750, Bethesda, MD 20892; *telephone* (301) 496–9838; *fax* (301) 496–9839; or *email gtr@od.nih.gov;* or refer to the GTR Web site at *http://oba.od.nih.gov/gtr/gtr.html*.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 16, 2011.

**Amy P. Patterson,**

*Associate Director for Science Policy, NIH.*

[FR Doc. 2011–30286 Filed 11–22–11; 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 patentablematerial, 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; Hemodialysis and Markers of Heart Failure.

*Date*: December 5, 2011.

*Time*: 2 p.m. to 3 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*: Barbara A WoynarowskA, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee*: National Institute of Diabetes and Digestive and Kidney Diseases Special; Emphasis Panel. HAPO Follow up Studies.

*Date*:December 7, 2011.

*Time*: 3 p.m. to 4 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*: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee*: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Study to the Hispanic Community Health Study.

*Date*: December 8, 2011.

*Time*: 4:30 p.m. to 6 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*: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; CF Centers.

*Date:* December 12, 2011.

*Time:* 1:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Lakshmanan Sandaran, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *ls38z@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: November 17, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–30278 Filed 11–22–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2011–0098]**

## Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS), Science and Technology, Protected Repository for the Defense of Infrastructure Against Cyber Threats (PREDICT) Program

**AGENCY:** Science and Technology Directorate, DHS.

**ACTION:** 60-day Notice and request for comment.

**SUMMARY:** The Department of Homeland Security (DHS), Science & Technology (S&T) Directorate invites the general public to comment on data collection forms for the Protected Repository for the Defense of Infrastructure against Cyber Threats (PREDICT) program, and is a revision of a previously approved collection. The PREDICT program facilitates the accessibility of computer and network operational data for use in cyber security research and development through the establishment of distributed repositories of security-relevant network operations data, and the application procedures, protection policies, and review processes necessary to make this data available to the cyber defense research community. The forms allow the PREDICT initiative to provide a central repository, accessible through a Web-based portal (*https://www.predict.org/*) that catalogs current computer network operational data, provide secure access to multiple sources of data collected as a result of use and traffic on the Internet, and facilitate data flow among PREDICT participants for the purpose of developing new models, technologies and products that support effective threat assessment and increase cyber security capabilities. The PREDICT Coordinating Center (PCC) has established application procedures, protection policies, and review processes necessary to make this data available to the cyber defense research community, and PREDICT has been operational since Fall 2008. In order for a user to access PREDICT data, s/he must complete a registration form to establish a user account. The information collected is used by the DHS S&T PREDICT program to determine the authenticity and validate the requestor's stated research against the data requested.

The DHS invites interested persons to comment on the following form and instructions (hereinafter ''Forms Package'') for the S&T PREDICT program. Interested persons may receive a copy of the Forms Package by contacting the DHS S&T PRA Coordinator. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

**DATES:** Comments are encouraged and will be accepted until January 23, 2012.

**ADDRESSES:** Interested persons are invited to submit comments, identified by docket number DHS–2011–0098, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *E-mail: Millie.Ives@dhs.gov.* Please include docket number DHS–2011–0098 in the subject line of the message.
- *Fax:* (202) 254–6171. (Not a toll-free number.)
- *Mail:* Science and Technology Directorate, ATTN: Chief Information Office—Millie Ives, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** DHS S&T PRA Coordinator Millie Ives (202) 254–6828. (Not a toll free number.)

**SUPPLEMENTARY INFORMATION:** The information will be collected via the DHS S&T PREDICT secure Web site at *http://www.predict.org/.* The PREDICT Web site employs only secure web-based technology to collect information from users to both reduce the burden and increase the efficiency of this collection.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest 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, *e.g.,* permitting electronic submissions of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Science and Technology, Protected Repository for the Defense of Infrastructure against Cyber Threats (PREDICT) program.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Department of Homeland Security, Science & Technology Directorate, Cyber Security Division (CSD).

(4) *Affected public who will be asked or required to respond, as well as a brief*

*abstract:* Individuals, consisting of federal, state and local law enforcement, private sector and academia practitioners. The information collected will be leveraged to determine the authenticity and suitability of the practitioner requesting access. Once approved, users will utilize the collaborative environment to upload documents/resources, exchange information, network with other users, as well as post blogs and comments.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 243.

b. *Estimate of the time for an average respondent to respond:* 0.5 burden hours.

c. *Estimate of the total public burden (in hours) associated with the collection:* 118.5 burden hours.

Dated: November 10, 2011.

**Rick Stevens,**

*Chief Information Officer for Science and Technology.*

[FR Doc. 2011–30172 Filed 11–22–11; 8:45 am]

**BILLING CODE 9110–9F–P**

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## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2011–0106]**

## President's National Security Telecommunications Advisory Committee

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** Committee Management; Notice of an Open Federal Advisory Committee Meeting.

**SUMMARY:** The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Thursday, December 8, 2011. The meeting will be open to the public.

**DATES:** The NSTAC will meet Thursday, December 8, 2011, from 9 a.m. to 1:30 p.m. Please note that the meeting may close early if the committee has completed its business.

**ADDRESSES:** The meeting will be held at the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) facility located at 500 12th Street SW., Washington, DC 20024. For access to the facility, contact Ms. Deirdre Gallop-Anderson at (703) 235–4282 or by email at *deirdre.gallop-anderson@dhs.gov* by 5 p.m. on December 2, 2011.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Deirdre Gallop-Anderson as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials that will be discussed during the meeting will be available at *http://www.ncs.gov/nstac* for review by Friday, December 2, 2011. Comments must be received in writing by the Acting Director of the National Communications System no later than January 8, 2012, and must be identified by **Federal Register** Docket Number DHS–2011–0106 and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov.* Include the docket number in the subject line of the email message.
- *Fax:* (703) 235–4981
- *Mail:* Acting Director, National Communications System, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Arlington, VA 20598–0615.

*Instructions:* All written submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket, background documents or comments received by the NSTAC, go to *www.regulations.gov.*

A public comment period will be held during the meeting on December 8, 2011, from 1:10 p.m. to 1:25 p.m. Speakers are required to register in advance in order to comment and are requested to limit their comments to three minutes. Speakers will be taken in order of registration, with the understanding that not all registered speakers may be accommodated within the allotted time. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact Ms. Deirdre Gallop-Anderson at (703) 235–4282 or by email at *deirdre.gallop-anderson@dhs.gov* by 5 p.m. December 2, 2011, to register as a speaker.

**FOR FURTHER INFORMATION CONTACT:** Allen F. Woodhouse, NSTAC Designated Federal Officer, Department of Homeland Security, telephone (703) 235–4214.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications policy.

During the meeting, NSTAC members will receive feedback from the Department of Homeland Security and the Executive Office of the President regarding ongoing NSTAC recommendations. They will also receive an update from the Cloud Computing Subcommittee, and receive an update on the National Public Safety Broadband Network Subcommittee scoping effort. Additionally, there will be three discussions about Priority Services for Next Generation Networks, a Cyber Code of Conduct and current NS/EP communications issues related to risk management. The NSTAC will discuss options for developing and deploying Next Generation Network Priority Service capabilities to ensure a seamless transition from existing circuit-switched Priority Services as the carriers transition to Internal Protocol platforms. During the session on Cyber Code of Conduct, Federal Government officials and members will discuss the issue of the potential economic impact and policy issues related to botnets and the problems they cause to computer systems, businesses, and consumers. (Botnets are a group of compromised computers that are connected to the Internet and are used for malicious purposes). This discussion will include steps to stop botnets from propagating and to remove or mitigate the malicious software where installed. The last discussion will center around industry's current risk management practices for NS/EP, how to better utilize these practices in Government to assure better response to cyber threats and how improving mechanisms for sharing threat information with industry can improve mitigation of cyber threats.

Dated: November 17, 2011.

**Michael Echols,**

*Alternate Designated Federal Official for the NSTAC.*

[FR Doc. 2011–30298 Filed 11–22–11; 8:45 am]

**BILLING CODE 9110–9P–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

**[Docket No. DHS–2011–0094]**

## Privacy Act of 1974; Department of Homeland Security/ALL—017 General Legal Records System of Records

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of Privacy Act system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a Department-wide system of records notice titled, ''Department of Homeland Security/ALL—017 General Legal Records System of Records.'' This system will assist attorneys in providing legal advice to the Department of Homeland Security on a wide variety of legal issues. As a result of the biennial review of this system, updates have been made to the routine uses within this notice and other administrative non-substantive changes. The subsections of the exemptions have been updated for accuracy and a new Notice of Proposed Rulemaking has been published. Until a new Final Rule is published, the Final Rule published on October 1, 2009 remains active and in place. This system will continue to be included in the Department of Homeland Security's inventory of record systems.

**DATES:** Submit comments on or before December 23, 2011. The new system of records will be effective December 23, 2011.

**ADDRESSES:** You may submit comments, identified by docket number DHS–2011–0094 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–(866) 466–5370.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** For general questions and privacy issues please contact: Mary Ellen Callahan (703) 235–0780, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to update and reissue a Department-wide system of records notice titled, ''DHS/ALL—017 General Legal Records System of Records.'' This system will assist attorneys in providing legal advice to DHS on a wide variety of legal issues.

As a result of the biennial review of this system, updates have been made to the routine uses within this notice and other administrative non-substantive changes. It also reflects that in some cases, the records in the system will be classified. The subsections of the exemptions have also been updated for accuracy and a new Notice of Proposed Rulemaking (NPRM) has been published. Until a new Final Rule is published, the Final Rule published on October 1, 2009 remains active and in place. Additions were made to the routine uses to include sharing with federal, state, local, tribal, territorial, foreign, or international agency, regarding individuals who pose or are suspected of posing a risk to transportation or national security; to former employees to respond to government agencies or licensing authorities or for personnel matters; to the Department of Justice, United States Attorney's Office, or other federal agencies to collect debt; to the Department of Transportation for certain purposes; and to third-parties regarding their employees, applicants, contractors, and individuals to whom the third-party issues credentials or clearance to secured areas.

The purpose of this system is to assist DHS attorneys in providing legal advice to DHS personnel on a wide variety of legal issues; to collect the information of any individual who is, or will be, in litigation with the Department, as well as the attorneys representing the plaintiff(s) and defendant(s) response to claims by employees, former employees, and other individuals; to assist in the settlement of claims against the government; to represent DHS during litigation, and to maintain internal statistics. DHS is authorized to implement this program primarily through 5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; The Homeland Security Act of 2002, Public Law 107–296; and The Aviation and Transportation Security Act, Public Law 107–71. This system has an affect on individual privacy that is balanced by the need to collect and maintain information related to legal advice issued. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to agencies, organizations or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; to an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order; to a court, magistrate, or administrative tribunal for hearings; to third parties during the course of an investigation; to a federal, state, local, tribal, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual; to international and foreign governmental entities in accordance with law and formal or informal international agreement; to State Bar Grievance Committees and local Attorney General offices for disbarment or disciplinary proceedings; to unions recognized as exclusive bargaining representatives; To a former employee of HDS, in accordance with applicable regulations; to the DOJ, United States Attorney's Office, or other federal agencies for further collection action on any delinquent debt; and to the news media in the interest of the public. This system will remain in constant review to ensure that if information is collected from the public that the practice is done so in compliance with Paperwork Reduction Act (PRA).

This system will continue to be included in DHS's inventory of record systems.

### II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by

the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description of the General Legal Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

**SYSTEM OF RECORDS:**

Department of Homeland Security (DHS)/ALL—017.

**SYSTEM NAME:**

DHS/ALL—017 General Legal Records System of Records.

**SECURITY CLASSIFICATION:**

Classified and Unclassified.

**SYSTEM LOCATION:**

Records are maintained at DHS and component locations in Washington, DC and field offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Categories of individuals covered by this system include DHS employees and former employees, other federal agency employees and former employees, members of the public, individuals involved in litigation with DHS or involving DHS, individuals who either file administrative complaints with DHS or are the subjects of administrative complaints initiated by DHS, individuals who are named parties in cases in which DHS believes it will or may become involved, matters within the jurisdiction of the Department either as plaintiffs or as defendants in both civil and criminal matters, witnesses, and to the extent not covered by any other system, tort and property claimants who have filed claims against the Government and individuals who are subject of an action requiring approval or action by a DHS official, such as appeals, actions, training, awards, foreign travel, promotions, selections, grievances and delegations, OGC attorneys to whom cases are assigned, and attorneys and authorized representatives for whom DHS has received complaints regarding their practices before DHS and/or the Executive Office for Immigration Review (EOIR).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Categories of records in this system include:

- Names of individuals involved in each legal case;
- Names of witnesses;
- Records relating to litigation by or against the U.S. Government (or litigation in which the U.S. Government is not a party, but has an interest) resulting from questions concerning DHS cases and legal actions that the Department either is involved in or in which it believes it will or may become involved;
- Claims by or against the Government, other than litigation cases, arising from a transaction with DHS, and documents related thereto, including demographic information, vouchers, witness statements, legal decisions, and related material pertaining to such claims;
- Investigation reports;
- Legal authority;
- Legal opinions and memoranda;
- Criminal actions;
- Criminal conviction records;
- Claims and records regarding discrimination, including employment and sex discrimination;
- Claims and records regarding the Rehabilitation Act;
- Claims against non-DHS attorneys and/or representatives who engage in unethical activities or exhibit unprofessional behavior;
- Copies of petitions filed with DHS;
- Personnel matters;
- Contracts;
- Foreclosures;
- Actions against DHS officials;
- Titles to real property;
- Records relating to requests for DHS records other than requests under the Freedom of Information Act and the Privacy Act of 1974;
- Testimonies of DHS employees in federal, state, local, or administrative criminal or civil litigation;
- Documentary evidence;
- Supporting documents including the legal and programmatic issues of the case, correspondence, legal opinions and memoranda and related records;
- State Bar grievance/discipline proceedings records;
- Security Clearance Information
- Records concerning requests for information regarding the use of reproductions of obligations of the United States, including bonds, checks, coins, coupons, currencies (U.S. and foreign), fractional notes, postage stamps (U.S. and foreign), postal money orders, and postmarks;
- Any type of legal document, including but not limited to complaints, summaries, affidavits, litigation reports, motions, subpoenas, and any other court filing or administrative filing or evidence;
- Employee and former employee ethics question forms and responses; and
- Court transcripts.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; The Homeland Security Act of 2002, Public Law 107–296; The Aviation and Transportation Security Act, Public Law 107–71.

**PURPOSE(S):**

The purpose of this system is to assist DHS attorneys in providing legal advice to DHS personnel on a wide variety of legal issues; to collect the information of any individual who is, or will be, in litigation with the Department, as well as the attorneys representing the plaintiff(s) and defendant(s) response to claims by employees, former employees, and other individuals; to assist in the settlement of claims against the government; to represent DHS during litigation, and to maintain internal statistics.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other federal agency or federal executive office conducting litigation or in anticipation of litigation before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee or former employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

I. To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

J. To a federal, state, local, tribal, foreign, or international agency, where such agency has requested information relevant or necessary for the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit, or if necessary to obtain information relevant to a DHS decision concerning the hiring or retention of an individual, the issuance of a security clearance, license, contract, grant, or other benefit.

K. To international and foreign governmental entities in accordance with law and formal or informal international agreement.

L. To State Bar Grievance Committees and local Attorney General offices for disbarment or disciplinary proceedings.

M. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties.

N. To the appropriate federal, state, local, tribal, territorial, foreign, or international agency, regarding individuals who pose or are suspected of posing a risk to transportation or national security.

O. To a former employee of DHS, in accordance with applicable regulations, for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel—related or other official purposes where the Department requires information or consultation assistances from the former employee regarding a matter within that person's former area of responsibility.

P. To the DOJ, United States Attorney's Office, or other federal agencies for further collection action on any delinquent debt when circumstances warrant, as well as to a debt collection agency for the purpose of debt collection.

Q. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

R. To the Department of Transportation and its operating administrations when necessary or relevant to (1) Ensure safety and security in any mode of transportation, (2) enforce DHS regulations or requirements, or (3) the issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.

S. To third parties about individuals who are their employees, job applicants, contractors, or any other individual who is issued credentials or granted clearances by the third party to secured areas when relevant to such employment, application, contract, or issuance of the credential or clearance.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) collecting on behalf of the United States Government.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored electronically or on paper in secure facilities behind a locked door. The electronic records are stored on magnetic disc, tape, digital media, CD–ROM, and computer.

**RETRIEVABILITY:**

Data may be retrieved by individual's name.

**SAFEGUARDS:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**RETENTION AND DISPOSAL:**

For DHS Headquarters, records are kept for 10 years, in accordance with National Archives and Records Administration General Records Schedule [schedule in process.] For components of DHS, retention may vary. Please contact the component system manager.

**SYSTEM MANAGER AND ADDRESS:**

The System Managers are the respective General Counsel/Chief Counsel for DHS and each of its components. Their addresses will vary according to each component.

**NOTIFICATION PROCEDURE:**

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0665, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–(866) 431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**RECORD ACCESS PROCEDURES:**

See ''Notification procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification procedure'' above.

**RECORD SOURCE CATEGORIES:**

Information originates with DHS and its components, court subpoenas, law enforcement agencies, other federal, state, and local courts, state bar licensing agencies, state bar grievance agencies, and inquiries and/or complaints from witnesses or members of the general public.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

The Secretary of Homeland Security has exempted this system from subsections (c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (e)(12); (f); (g)(1); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted this system from subsections (c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5).

Dated: October 26, 2011.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2011–30175 Filed 11–22–11; 8:45 am]

**BILLING CODE 9110–9L–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2008–0022]**

### Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants, NUREG–0654/FEMA–REP–1, Supplement 4 and FEMA Radiological Emergency Preparedness Program Manual

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is issuing two final guidance documents: Supplement 4 (Supplement 4) to ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' NUREG–0654/FEMA–REP–1, Revision 1 (NUREG–0654), and the Radiological Emergency Preparedness Program Manual (the REP Program Manual). Supplement 4 is a joint document issued by FEMA and the Nuclear Regulatory Commission (NRC) that contains the evaluation criteria against which FEMA and the NRC measure the emergency preparedness plans of nuclear power plant owners, operators and the State, local, and Tribal jurisdictions in which they reside. The REP Program Manual is intended to be the principal source of policy and guidance for State, local, and Tribal jurisdictions. Supplement 4 revises and provides additional offsite requirements for emergency preparedness programs at the Nation's nuclear power plants, as well as requirements for backup means for alert and notification and coordination between licensees and offsite responders. The REP Program Manual consolidates many of the REP Program's operative guidance and policy documents into one location, and

provides additional guidance on Supplement 4 criteria. FEMA is also providing the public comment adjudication matrix for the REP Program Manual and Supplement 4.

**DATES:** Supplement 4 and the REP Program Manual are effective December 23, 2011.

**ADDRESSES:** Supplement 4, the REP Program Manual, and the public comment adjudication matrix are available online at *www.regulations.gov* under docket ID FEMA–2008–0022. You may also view hard copies of these documents at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Craig Fiore, Policy, Regulations and Training Section Chief, Radiological Emergency Preparedness Branch, Technological Hazards Division, Protection and National Preparedness, National Preparedness Directorate, *craig.fiore@dhs.gov,* (703) 605–4218.

**SUPPLEMENTARY INFORMATION:** FEMA is issuing Supplement 4 and the REP Program Manual for implementation. These documents conform to changes in the NRC's emergency preparedness regulations, which are also effective December 23, 2011 and published in the **Federal Register**. The docket for the NRC rulemaking, *Enhancements to Emergency Preparedness Regulations,* RIN 3150–AI10, can be viewed on *www.regulations.gov* under Docket ID NRC–2008–0122.

FEMA published a notice of availability for the REP Program Manual and Supplement 4 on May 18, 2009, at 74 FR 23198. The original comment period was scheduled to conclude on August 3, 2009. After the May 18, 2009 publication of the notice of availability, FEMA and the NRC received several comments requesting that the period be extended beyond the original 75-day comment period. These requests suggested a range of more appropriate comment periods, lasting from 150 to 180 days. Various organizations cited the voluminous material put forth by the agencies for comment.

Because the proposed regulatory amendments and guidance documents cover many legal, regulatory, and policy matters that may require a time consuming review by licensees and their offsite counterparts, FEMA and the NRC determined that it was in the interest of all parties to extend the comment period to October 19, 2009. (74 FR 27557, June 10, 2009).

From June 2 through June 23, 2009, FEMA and the NRC jointly hosted a series of public meetings in various cities throughout the country. (74 FR 26418, June 2, 2009).

**Supplement 4**

As part of the domestic licensing of commercial nuclear power plants (NPPs), FEMA and the NRC evaluate emergency preparedness activities at these facilities. Preparedness activities for a radiological incident at an NPP are an essential part of planning and preparing for communities that could be affected by an incident at the facility. FEMA's role is to review and provide findings to the NRC on planning and preparedness activities of State, local, and Tribal governments, licensee emergency response organizations, if applicable, and other supporting organizations (collectively referred to as Offsite Response Organizations or OROs). FEMA performs this activity before the NRC issues a license to operate a NPP, as well as provides ongoing certifications that planning and preparedness efforts are effective and consistent with relevant regulatory guidelines. The NRC evaluates applicants for NPP site permits, construction permits, and operating licenses. As a part of that evaluation, the NRC reviews the licensees' emergency plans and preparedness efforts.

NPP licensees and OROs must show that they have plans in place that provide a reasonable assurance that adequate protective measures will be taken to protect public health and safety in the event of an incident at an NPP. FEMA evaluates the adequacy of the offsite plans and capabilities through the 16 planning standards that are contained in FEMA regulations at 44 CFR 350.5 and NRC regulations at 10 CFR part 50.

The NRC and FEMA have also developed a number of evaluation criteria that the agencies use to determine compliance with each of the 16 planning standards. Those evaluation criteria are contained in NUREG–0654 which is referred to in FEMA's regulations at 44 CFR 350.5, as well as in NRC regulations at 10 CFR part 50.

Supplement 4 provides additional guidance for the development, review, and evaluation of offsite radiological emergency response planning and preparedness surrounding the Nation's commercial NPPs. It addresses four emerging issues: (1) Aligning the offsite REP Program with national preparedness initiatives under Homeland Security Presidential Directives (HSPD) 5 and Presidential Policy Directive (PPD) 8; (2) preparing for and responding to hostile action-based (HAB) incidents at NPPs; (3) enhancing scenario realism and reducing negative training and pre-conditioned responses of exercise participants; and (4) ensuring backup means are in place for alert and notification systems. In addition, Supplement 4 revises and adds evaluation criteria and revises Appendix 3 of NUREG–0654. Although licensees and applicants may consult Supplement 4 for informational purposes, this supplement provides guidance to OROs with respect to preparing offsite plans and conducting exercises in a manner that will be found acceptable to FEMA and the NRC. Any requirements and guidance for licensees and applicants on the issues addressed in Supplement 4 are contained in NRC regulations in 10 CFR part 50 and NRC NSIR/DPR–ISG–01, Interim Staff Guidance, Emergency Planning for Nuclear Power Plants, respectively.

**The REP Program Manual**

The REP Program Manual provides guidance that interprets the planning standards and evaluation criteria contained in NUREG–0654 and 44 CFR part 350. This guidance provides additional detail to OROs in the vicinity of commercial NPPs on what FEMA expects OROs to include in their radiological emergency response plans. This manual also provides the assessment criteria that FEMA uses to evaluate the ability of the ORO communities to implement radiological emergency response plans. Lastly, this manual provides additional information and guidance to aid FEMA staff and OROs in performing the various functions under the REP Program (*e.g.,* checklists, templates, references, *etc.*).

In August 2002, FEMA released an Interim REP Program Manual for use by OROs, nuclear power plant licensees, FEMA Regional staff, the NRC, and other stakeholders in developing plans or assessing planning and preparedness in communities surrounding the Nation's NPPs. In updating the 2002 Interim REP Program Manual, FEMA made important changes to both the language and the substance of the document. First, FEMA conducted a ''plain English'' review to produce a more easily understandable document by considering the audience's needs and avoiding unnecessary words, jargon, technical terms, and long and ambiguous sentences. Second, the new REP Program Manual provides guidance on the integration of contemporary national preparedness terms and concepts found in the National Incident Management System (NIMS)/Incident Command System (ICS) and the National Exercise Program, Homeland Security Exercise Evaluation Program

(HSEEP). Further, the REP Program Manual provides additional guidance on the new or revised evaluation criteria proposed in Supplement 4 and the NRC's rulemaking. Because contemporary national preparedness terms and concepts are evolving, additional future revisions and modifications may be necessary to the REP Program Manual.

The REP Program Manual is divided into four main sections and includes additional appendices. Part I serves as an introduction and overview of the REP Program. It provides the history and establishment of the REP Program, a description of the review process, and the technical basis for the program. This section intends to provide a base knowledge about the program as well as a description of how the current program operates through a synopsis of the program's evolution since its inception.

Part II contains the NUREG–0654 planning standards and evaluation criteria, along with expansive explanations and guidance on materials to be included in ORO plans/procedures. This is a new section of the manual that clarifies but does not exceed the regulation nor does it replace 44 CFR part 350 or NUREG–0654 and is solely meant to provide guidance.

Part III discusses the Homeland Security Exercise and Evaluation Program (HSEEP) process and provides specific guidance unique to the design, development, conduct, evaluation, and improvement planning associated with REP exercise activities. This guidance is intended for use by REP controllers, evaluators, contractors, and any Federal, State, Tribal, or local agencies responsible for planning, preparing, and executing exercises that are used to validate REP Program requirements. This section provides licensee partners with guidelines regarding how the Federal government will coordinate exercise activities in conjunction with the REP Program.

Part IV is comprised of supporting reference documentation, where specific information is found in support of the program. It includes information on potassium iodide and disaster initiated reviews, scenario reviews, plan reviews, the Annual Letter of Certification (ALC), and other topics.

The appendices include acronyms, a glossary, historical REP references (active and retired), plant site identifier numbers and the Target Capabilities List.

The REP Program Manual incorporates and updates previously-issued FEMA Guidance Memoranda (GMs), policy memoranda, and some FEMA–REP series documents. The REP Program Manual effectively retires these documents from use as independent resources. Guidance on specific technical areas and other REP Program documents that FEMA was unable to incorporate have been retained as ''technical references.'' The remaining stand-alone FEMA–REP series documents and these technical references are listed in Appendix C and cited in the applicable parts of this proposed REP Program Manual. The retired guidance documents are listed in Appendix D as a historical resource. To the greatest extent possible, FEMA will issue all future REP Program guidance as amendments to the applicable parts of the REP Program Manual.

**Authorities:** DHS/FEMA issues the new REP Program Manual, and FEMA and the NRC jointly issue Supplement 4 to NUREG–0654 under the authority of: Reorganization Plan No. 3 of 1978; Presidential Directive of Dec. 7, 1979; Executive Order 12148 ''Federal Emergency Management''; Section 201 of the Disaster Relief Act of 1974, 42 U.S.C. 5131, as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100–707, 102 Stat. 4689 (1988); Homeland Security Act of 2002, (Pub. L. 107–296) 6 U.S.C. 101 *et seq.;* NRC Authorization Acts of 1980 (Pub. L. 96–295) and 1982—1983 (Pub. L. 97–415); Atomic Energy Act of 1954, as amended 42 U.S.C. 2011 *et seq.;* Energy Reorganization Act of 1974 (Pub. L. 93–438), 42 U.S.C. 5801 *et seq.;* Energy Policy Act of 2005 (Pub. L. 109–58), 42 U.S.C. 15801 note; Homeland Security Presidential Directive 5: Management of Domestic Incidents; and Presidential Policy Directive 8: National Preparedness; 10 CFR part 50; 10 CFR part 50, Appendix E; and 44 CFR parts 350—354.

Dated: November 7, 2011.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–29733 Filed 11–22–11; 8:45 am]

BILLING CODE 9110–21–P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

**[Docket No. TSA–2007–28572]**

### Revision of Agency Information Collection Activity Under OMB Review: Secure Flight Program

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-day Notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0046, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on August 3, 2011, 76 FR 46830. The collection involves passenger information which certain U.S. aircraft operators and foreign air carriers submit to Secure Flight for the purposes of watch list matching, identifying information of non-traveling individuals seeking access to commercial establishments beyond the screening checkpoint which airport operators will submit to Secure Flight, and a survey of certain general aviation aircraft operators who may access Secure Flight in the future.

**DATES:** Send your comments by December 23, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; email *TSAPRA@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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 agency's estimate of the burden;

(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 would respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Information Collection Requirement**

*Title:* Secure Flight Program.

*Type of Request:* Revision of a currently approved collection.

*OMB Control Number:* 1652–0046.

*Forms(s):* N/A.

*Affected Public:* Aircraft operators, airport operators.

*Abstract:* The Transportation Security Administration collects information from covered aircraft operators, including foreign air carriers, in order to perform watch list matching under the Secure Flight Program. The collection covers passenger reservation data for covered domestic and international flights within, to, from, or over the continental United States. The collection also covers the collection from covered aircraft operators of certain identifying information for non-traveling individuals who the aircraft operators seek to authorize to enter a sterile area at a U.S. airport, for example, to escort a minor or a passenger with disabilities or for another approved purpose. The collection also covers passenger data for charter operators and lessors of aircraft with a maximum takeoff weight of over 12,500 pounds. The collection will also cover certain identifying information for non-traveling individuals who airport operators seek to authorize to proceed through the screening checkpoint to access an airport's sterile area in order to utilize commercial establishments beyond the screening checkpoint. The collection will also cover a voluntary survey of certain general aviation aircraft operators who may access Secure Flight in the future.

*Number of Respondents:* 1,731.

*Estimated Annual Burden Hours:* An estimated 692,609 hours annually. After further evaluation, TSA has revised the burden estimates that were published in the notice published August 3, 2011.

Issued in Arlington, Virginia, on November 18, 2011.

**Joanna Johnson,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2011–30296 Filed 11–22–11; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R9–IA–2011–N250; 96300–1671–0000–P5]**

### Endangered Species; Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

**DATES:** We must receive comments or requests for documents on or before December 23, 2011.

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

**I. Public Comment Procedures**

*A. How do I request copies of applications or comment on submitted applications?*

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**II. Background**

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government'' and FR Doc. No. 2009–01777, ''Memorandum for the Heads of Executive Departments and Agencies—Transparency and Open Government'' (January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment before final action on these permit applications before final action is taken.

**III. Permit Applications**

*A. Endangered Species*

*Applicant:* Nashville Zoo, Nashville, TN; PRT–56912A

The applicant requests a permit to import two captive-born red-crowned cranes (*Grus japonensis*) from Wuppertal Zoological Gardens, Germany, for the purpose of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*), culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Rudolph Molina, Arroyo Grande, CA; PRT–56356A

*Applicant:* Donald Eldridge, Lexington, OK; PRT–57898A

*Applicant:* Kie Hankins, Lampasas, TX; PRT–52918A

*Applicant:* Thomas Price, Ellicott City, MD; PRT–51735A

*Applicant:* Clermont Pare, Potomac, MD; PRT–58883A

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2011–30246 Filed 11–22–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAK920000–L14100000–BJ0000]**

### Notice of Filing of Plats of Survey; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Survey.

**SUMMARY:** Notice of Filing of Plats of Survey; Alaska.

**SURVEY DESRIPTIONS:** The plat and field notes, representing the dependent resurvey of a portion of Lot 3, U.S. Survey No. 11233, situated within Township 13 North, Range 9 East, Copper River Meridian, Alaska.

**DATES:** The plat of survey described above is scheduled to be officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, December 23, 2011.

**ADDRESSES:** Bureau of Land Management, Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** Michael H. Schoder, Chief Cadastral Surveyor, Division of Cadastral Survey, BLM–Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599; *Tel:* (907) 271–5481; *fax:* (907) 271–4549; *email:* mschoder@blm.gov.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The survey plat(s) and field notes will be available for inspection in the Public Information Center, Alaska State Office, Bureau of Land Management, 222 West 7th Avenue, Anchorage, Alaska, 99513–7599; telephone (907) 271–5960. Copies may be obtained from this office for a minimum recovery fee.

If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against this survey must file a written response with the Alaska State Director, Bureau of Land Management, stating that they wish to protest.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

A statement of reasons for a protest may be filed with the notice of protest to the State Director; the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

**Authority:** 43 U.S.C. 3; 53.

Dated: November 16, 2011.

**Michael H. Schoder,**

*Chief Cadastral Surveyor, Alaska.*

[FR Doc. 2011–30228 Filed 11–22–11; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNMP0000 L13110000.XH0000]**

### Notice of Public Meeting, Pecos District Resource Advisory Council Meeting, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Pecos District Resource Advisory Council (RAC), will meet as indicated below.

**DATES:** The meeting will be held on January 18, 2012, from 10 a.m.–4:30 p.m. and January 19, 2012, from 8 a.m.–3 p.m.

**ADDRESSES:** The meetings will be at the Bureau of Land Management Carlsbad Field Office, 620 E. Greene, Carlsbad, NM, on January 18, with a tour for RAC members of a potash mine on January 19, 2012. The public may send written comments to the RAC, 2909 W. 2nd Street, Roswell, NM 88201.

**FOR FURTHER INFORMATION CONTACT:** Betty Hicks, Pecos District, Bureau of Land Management, 2909 W. 2nd Street, Roswell, NM 88201, (575) 627–0242. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 10-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. Planned agenda items include: Update on the Carlsbad Resource Management Plan, Potash mining and solution mining, election of officers, and information about the Permian Memorandum of Agreement for cultural resources.

A half-hour public comment period during which the public may address the Council is scheduled to begin at 3:30 p.m. on January 18. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

**Douglas J. Burger,**

*District Manager.*

[FR Doc. 2011–30230 Filed 11–22–11; 8:45 am]

**BILLING CODE 4310–VA–P**

## DEPARTMENT OF INTERIOR

### National Park Service

**[NPS–WASO–NRSS–1111–8897; 2350–N003–NAZ]**

### Agency Information Collection Activities: Proposed Reinstatement with Change of a Previously Approved Collection; Visibility Valuation Survey: Pilot Study

**AGENCY:** U.S. Department of the Interior, National Park Service.

**ACTION:** Notice and request for comments.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we (the National Park Service) are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for a proposed new collection. This notice provides the public and other Federal agencies an opportunity to comment on the paperwork burden of this collection. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other federal agencies to comment on this ICR. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

**DATES:** To ensure that your comments on this ICR are considered, please submit them on or before December 23, 2011.

**ADDRESSES:** Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email to OIRA_DOCKET@omb.eop.gov or fax at (202) 395–5806; and identify your submission as 1024–0255. Please also send a copy of your comments to Phadrea Ponds, Information Collections Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or phadrea_ponds@nps.gov (email).

**FOR FURTHER INFORMATION CONTACT:** Susan Johnson, National Park Service Air Resources Division, U.S. National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225 (mail); *susan_Johnson@nps.gov* (email); or (303) 987–6694 (telephone).

**I. Abstract**

The Clean Air Act (Sections 169A, 169B, and 110(a)(2)(j) charges the NPS with an ''affirmative responsibility to protect air quality related values (including visibility).'' The NPS, believes that the value of visibility changes should be represented in cost-benefit analyses performed regarding state and federal efforts that may affect visibility (including the Regional Haze Rule, 40 CFR part 51). Updated estimates of visibility benefits are required because the studies conducted in the 1970s and 1980s are not adequate to provide a baseline of current visibility conditions in national parks and wilderness.

The NPS plans to conduct a nationwide stated preference survey to estimate the value of visibility changes in national parks and wilderness areas. Stated preference surveys are carefully designed to elicit respondents' willingness to pay for improvements in environmental quality. A stated preference survey will be required for the general population as many U.S. citizens may be willing to pay to improve or maintain visibility at national parks and wilderness areas, however they may not use these areas. Stated preference surveys are the only methodology available to estimate these non-use values.

Survey development and pre-testing have already been conducted under a previous ICR (OMB Control Number 1024–0255). The purpose of this information collection is to conduct a pilot study to test the survey instrument and implementation procedures prior to the full survey. After the pretest is completed, the NPS will submit a revised Information Collection Request (ICR) to OMB for the full survey.

**II. Data**

*OMB Number:* 1024–0255.

*Title:* Visibility Valuation Survey Pilot Study.

*Type of Request:* This is a reinstatement of a previously approved collection.

*Affected Public:* Individuals or households.

*Respondent Obligation:* Voluntary.

*Estimated Number of Respondents:* 900 mail and internet survey; 110 non-response survey.

*Estimated Time and frequency of Response:* This is a one-time survey estimated to take 20 minutes per respondent to complete the mail or internet survey and 5 minutes to complete the non-response survey.

*Estimated Total Annual Burden Hours:* 309 hours.

**III. Request for Comments**

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. While you can ask us in your comment to withhold personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 15, 2011.

**Robert M. Gordon,**

*Information Collection Clearance Officer, National Park Service.*

[FR Doc. 2011–30168 Filed 11–22–11; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–PWR–PWRO–0927–8527; 2310–0057–422]**

### Draft Environmental Impact Statement for Protecting and Restoring Native Ecosystems by Managing Non-Native Ungulates, Hawaii Volcanoes National Park, Hawaii

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Availability for Draft Environmental Impact Statement for Protecting and Restoring Native Ecosystems by Managing Non-Native Ungulates.

**SUMMARY:** The National Park Service (NPS) announces the availability of the Draft Environmental Impact Statement (Draft EIS) for Protecting and Restoring Native Ecosystems by Managing Non-Native Ungulates, Hawaii Volcanoes National Park, Hawaii. The park's current management plan for non-native ungulate control was developed nearly 40 years ago. The new plan will provide a park-wide framework to systematically guide non-native ungulate management activities over the next 15–20 years. The Draft EIS presents five alternatives for managing non-native ungulates in a manner that supports long-term ecosystem protection, supports natural ecosystem recovery and provides desirable conditions for active ecosystem restoration, and supports

protection and preservation of cultural resources.

**DATES:** All comments must be postmarked or transmitted not later than 60 days following publication by the U.S. Environmental Protection Agency (EPA) of its notice of filing of the Draft EIS. Immediately upon confirmation of this date an announcement will be posted by the NPS on the Project Web site, along with times and locations of three public meetings (December 5 in Volcano, December 6 in Na'alehu, and December 8 in Kailua-Kona). This information will also be announced via press releases and direct mailings to the park's mailing list.

**SUPPLEMENTARY INFORMATION:** Because the ecosystems of the Hawaiian Islands evolved over millions of years in the absence of large mammalian herbivores, they are extremely vulnerable to the effects of non-native ungulates, which, in the park, include mouflon sheep (mouflon) (*Ovis musimon*), pigs (*Sus scrofa*), sheep (*Ovis aries*), goats (*Capra hircus*) and small numbers of feral cattle (*Bos taurus*). These animals cause loss of vegetation, wildlife habitat degradation, population decline for native Hawaiian species, including numerous threatened, endangered, and sensitive plants and wildlife, and deterioration of watersheds.

The loss of native species and damage to the ecological integrity of the area also detracts from the natural conditions that contribute to the wilderness character of the park (which currently contains 130,790 acres designated as Wilderness). Cultural resources at the park are also susceptible to impacts from non-native ungulates, including physical effects from trampling, digging, and rooting; alterations in the ecosystem of an area; and loss of native plant and animal communities important to the culture of native peoples.

The Draft EIS identifies and analyzes five alternatives—a no-action alternative (A) and four action alternatives (B, C, D, and E). Under *Alternative A* the NPS would continue current non-native ungulate management practices, which include lethal reduction, supported by qualified volunteers, and fencing (the current program is based on the 1974 resources management plan/EIS and subsequent amendments, and other management decisions).

*Alternative B:* the NPS would implement a comprehensive, systematic management plan that would use fencing and lethal techniques, and would continue the use of qualified volunteers. *Alternative C:* the NPS would implement a comprehensive, systematic management plan that includes fencing and maximizes efficiency by expanding lethal removal techniques, and discontinues the use of volunteers. *Alternative D* (agency-preferred): the NPS would implement a comprehensive, systematic management plan that includes fencing, maximizes flexibility, and continues the use of volunteers. Management tools would rely primarily on lethal techniques, but non-lethal techniques such as relocation could also be considered. *Alternative E:* the NPS would implement a comprehensive, systematic management plan that increases flexibility of management techniques similar to Alternative D, while limiting the use of volunteers.

Electronic copies of the Draft EIS will be available on-line for public review and comment at the Project Web site: *http://www.parkplanning.nps.gov/havo_ecosystem_deis.* In addition, printed copies of the Draft EIS will be available at local public libraries (locations noted on Web site). Persons who wish to comment on the Draft EIS may submit comments by any one of several methods: Electronic comments may be submitted via the internet at the Project Web site noted above. Written comments can be mailed to Park Superintendent, Hawaii Volcanoes National Park, P.O. Box 52, Hawaii National Park, HI 96718–0052. Comments can be submitted at one of the public meetings to be held during the 60-day comment period (information to be provided as noted above) or hand-delivered to the Park Superintendent c/o Kilauea Visitor Center, Hawaii Volcanoes National Park, Hawaii, 96718.

Before including your address, telephone number, electronic mail address, or other personal identifying information in your comment, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time.

While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Also, bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

*Decision Process:* Following due consideration of all agency and public comment on the Draft EIS, a Final EIS will be prepared and availability similarly announced in the **Federal Register**. As a delegated EIS, the official responsible for the final decision on the non-native ungulates management plan is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementation of the approved plan is the Superintendent, Hawaii Volcanoes National Park.

Dated: August 16, 2011.

**Patricia L. Neubacher,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. 2011–30170 Filed 11–22–11; 8:45 am]

BILLING CODE 4310–KV–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Minor Boundary Revision at Colorado National Monument

**AGENCY:** National Park Service, Interior.

**ACTION:** Notification of Boundary Revision.

**SUMMARY:** Notice is hereby given that, pursuant to 16 U.S.C. 460*l*–9(c)(1), the boundary of Colorado National Monument is modified to include an additional two and forty-five hundredths (2.45) acres of land identified as Tract 01–140, tax parcel number 2697–343–04–009. The land is located in Mesa County, Colorado, immediately adjacent to the current eastern boundary of Colorado National Monument. The boundary revision is depicted on Map No. 119/106,532 dated January 2011. The map is available for inspection at the following locations: National Park Service, Intermountain Land Resources Program Center, 12795 W. Alameda Parkway, Lakewood, CO 80225–0287 and National Park Service, Department of the Interior, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** National Park Service, Glenna F. Vigil, Chief, Land Resources Program Center, Intermountain Region, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2610.

**DATES:** The effective date of this boundary revision is November 23, 2011.

**SUPPLEMENTARY INFORMATION:** 16 U.S.C. 460*l*–9(c)(1) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register.** The Committees have been notified of this boundary revision. Inclusion of these lands within the monument boundary will enable the landowner to sell the subject land to the National Park Service. The inclusion and acquisition of this property will enable the National Park Service to provide expanded parking facilities at

the Lower Monument Canyon Trailhead. Additionally, the boundary revision will provide increased visitor safety while entering and exiting the Lower Monument Canyon Trailhead Parking Area and will prevent further damage to the natural and cultural resources in the area.

Dated: June 20, 2011.

**John Wessels,**

*Regional Director, Intermountain Region.*

[FR Doc. 2011–30167 Filed 11–22–11; 8:45 am]

**BILLING CODE 4312–CP–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1185 (Final)]**

## Certain Steel Nails From the United Arab Emirates; Scheduling of the Final Phase of Antidumping Investigation

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1185 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from The United Arab Emirates of certain steel nails, provided for in subheadings 7317.00.55, 7317.00.65, and 7317.00.75 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, 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 and C (19 CFR part 207).

**DATES:** *Effective Date:* November 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202–205–3187, *fred.ruggles@usitc.gov*), 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 investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of this investigation is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain steel nails from the United Arab Emirates are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 31, 2011, by Mid Continent Nail Corporation, Poplar Bluff, MO.

*Participation in the investigation 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 the final phase of this investigation 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, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

*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 the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation 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 final phase of this investigation will be placed in the nonpublic record on March 6, 2012, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on March 20, 2012, 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 March 15, 2012. 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 March 15, 2012, 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), and 207.24 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 who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 13, 2012. 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 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 27, 2012; witness testimony must be filed

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot-dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this investigation are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Certain steel nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire.

no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before March 27, 2012. On April 12, 2012, 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 April 16, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.30 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. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

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 investigation must be served on all other parties to the investigation (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 investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 17, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30183 Filed 11–22–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[DN 2858]**

## Certain Consumer Electronics and Display Devices and Products Containing Same; Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Consumer Electronics and Display Devices and Products Containing Same,* DN 2858; the Commission is soliciting comments on any public interest issues raised by the complaint.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint filed on behalf of Graphics Properties Holdings, Inc. on November 17, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain consumer electronics and display devices and products containing same. The complaint names Research In Motion Ltd. of Canada; Research In Motion Corp. of Irving, TX; HTC Corporation of Taiwan; HTC America, Inc. of Bellevue, WA; LG Electronics, Inc. of South Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, NJ; LG Electronics MobileComm U.S.A. Inc. of San Diego, CA; Apple Inc. of Cupertino, CA; Samsung Electronics Co., Ltd. of South Korea; Samsung Electronics America, Inc. of Ridgefield Park, NJ; Samsung Telecommunications America L.L.C. of Richardson, TX; Sony Corporation of Japan; Sony Corporation of America of New York, NY; Sony Ericsson Mobile of Sweden; and Sony Ericsson Mobile of Research Triangle Park, NC, as respondents.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2858'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by

facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf.* Persons with questions regarding electronic filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: November 17, 2011.

By order of the Commission.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30184 Filed 11–22–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–477 and 731–TA–1180–1181 (Final)]**

## Bottom Mount Combination Refrigerator-Freezers From Korea and Mexico; Scheduling of the Final Phase of Countervailing Duty and Antidumping Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation no. 701–TA–477 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation nos. 731–TA–1180–1181 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Korea [1] and less-than-fair-value imports from Korea and Mexico of bottom mount combination refrigerator-freezers, provided for in subheadings 8418.10.00, 8418.21.00, 8418.99.40, and 8418.99.80 of the Harmonized Tariff Schedule of the United States.[2]

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 and C (19 CFR part 207).

**DATES:** *Effective Date:* November 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cassise (202) 708–5408, 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that bottom mount combination refrigerator-freezers from Korea and Mexico are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on March 30, 2011, by Whirlpool Corporation, Benton Harbor, MI.

*Participation in the investigations 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 the final phase of these investigations 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, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing

[1] Although the Department of Commerce has preliminarily determined that imports of bottom mount combination refrigerator-freezers from Korea are not being and are not likely to be subsidized by the Government of Korea, for purposes of efficiency the Commission hereby waives rule 207.21(b) so that the final phase of the investigations may proceed concurrently in the event that Commerce makes a final affirmative determination with respect to such imports. Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will publish a Final Phase Notice of Scheduling upon receipt of an affirmative final determination from Commerce.

[2] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as all bottom mount combination refrigerator-freezers and certain assemblies thereof from Korea and Mexico. For purposes of these investigations, the term ''bottom mount combination refrigerator-freezers'' denotes freestanding or built-in cabinets that have an integral source of refrigeration using compression technology, with all of the following characteristics:

(1) The cabinet contains at least two interior storage compartments accessible through one or more separate external doors or drawers or a combination thereof;

(2) The upper-most interior storage compartment(s) that is accessible through an external door or drawer is either a refrigerator compartment or convertible compartment, but is not a freezer compartment; and

(3) There is at least one freezer or convertible compartment that is mounted below the upper-most interior storage compartment(s).

For purposes of these investigations, a refrigerator compartment is capable of storing food at temperatures above 32 degrees F (0 degrees C), a freezer compartment is capable of storing food at temperatures at or below 32 degrees F (0 degrees C), and a convertible compartment is capable of operating as either a refrigerator compartment or a freezer compartment, as defined above.

Also covered are certain assemblies used in bottom mount combination refrigerator-freezers, namely: (1) Any assembled cabinets designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) an external metal shell, (b) a back panel, (c) a deck, (d) an interior plastic liner, (e) wiring, and (f) insulation; (2) any assembled external doors designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) An external metal shell, (b) an interior plastic liner, and (c) insulation; and (3) any assembled external drawers designed for use in bottom mount combination refrigerator-freezers that incorporate, at a minimum: (a) An external metal shell, (b) an interior plastic liner, and (c) insulation.

The products subject to these investigations are currently classifiable under subheadings 8418.10.0010, 8418.10.0020, 8418.10.0030, and 8418.10.0040 of the Harmonized Tariff System of the United States (HTSUS). Products subject to these petitions may also enter under HTSUS subheadings 8418.21.0010, 8418.21.0020, 8418.21.0030, 8418.21.0090, and 8418.99.4000, 8418.99.8050, and 8418.99.8060. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

the names and addresses of all persons, or their representatives, who are parties to the investigations.

*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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations 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 final phase of these investigations will be placed in the nonpublic record on February 28, 2012, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 13, 2012, 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 March 8, 2012. 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 March 12, 2012, 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), and 207.24 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 who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 6, 2012. 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 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 20, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 20, 2012. On April 10, 2012, 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 April 12, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.30 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. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

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 investigations must be served on all other parties to the investigations (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:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 17, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30185 Filed 11–22–11; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–478 (Final) and 731–TA–1182 (Final)]**

## Certain Steel Wheels From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–478 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731–TA–1182 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of certain steel wheels, provided for in subheading 8708.70 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 and C (19 CFR part 207).

**DATES:** *Effective Date:* November 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202) 205–3193, 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

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as follows: ''The products covered by this investigation are steel wheels with a wheel diameter of 18 to 24.5 inches. Rims and discs for such wheels are included, whether imported as an assembly or separately. These products are used with both tubed and tubeless tires. Steel wheels, whether or not attached to tires or axles, are included. However, if the steel wheels are imported as an assembly attached to tires or axles, the tire or axle is not covered by the scope. The scope includes steel wheels, discs, and rims of carbon and/or alloy composition and clad wheels, discs, and rims when carbon or alloy steel represents more than fifty percent of the product by weight. The scope includes wheels, rims, and discs, whether coated or uncoated, regardless of the type of coating.''

(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 these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of certain steel wheels, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on March 30, 2011, by Accuride Corp., Evansville, IN, and Hayes Lemmerz International, Inc., Northville, MI.

*Participation in the investigations 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 the final phase of these investigations 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, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

*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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations 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 final phase of these investigations will be placed in the nonpublic record on February 23, 2012, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 8, 2012, 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 March 2, 2012. 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 March 6, 2012, 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), and 207.24 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 who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 1, 2012. 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 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 15, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 15, 2012. On April 10, 2012, 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 April 12, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.30 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. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

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 investigations must be served on all other parties to the investigations (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:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 17, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30181 Filed 11–22–11; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–814]**

## Certain Automotive GPS Navigation Systems, Components Thereof, and Products Containing Same Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S.

International Trade Commission on October 21, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Beacon Navigation GmbH of Switzerland. A letter supplementing the complaint was filed on November 8, 2011. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive GPS navigation systems, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,374,180 (''the '180 patent''); U.S. Patent No. 6,178,380 (''the '380 patent''); U.S. Patent No. 6,029,111 (''the '111 patent''); and U.S. Patent No. 5,862,511 (''the '511 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue exclusion orders and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 17, 2011, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain automotive GPS navigation systems, components thereof, and products containing same that infringe one or more of claims 1–4, 7–9, and 15 of the '180 patent; claims 1–4, 18–21, and 25–31 of the '380 patent; claims 1–3, 5, 10–12, and 17–21 of the '111 patent; and claims 1 and 3 of the '511 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors, 19 U.S.C. 1337(d)(1), (f)(1),(g)(1), and shall not include the other issues raised by certain of the respondents in their responses to the Commission's Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest (76 FR 66750);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Beacon Navigation GmbH, c/o Acton Treuhand AG, Innere Güterstrasse 4, 6304 Zug, Switzerland.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Audi AG, Ettinger Strasse, D–85045, Ingolstadt, Germany; Audi of America, Inc., 3800 W. Hamlin Road, Auburn Hills, MI 48326;
Audi of America, LLC, 2200 Ferdinand Porsche Dr., Herndon, VA 20171;
Bayerische Motoren Werke AG, Petuelring 130, D–80788, Munich, Germany;
BMW of North America, LLC, 300 Chestnut Ridge Rd., Woodcliff Lake, NJ 07677;
BMW Manufacturing Co., LLC, 1400 Hwy. 101 S., Greer, SC 29651–6731;
Chrysler Group LLC, 1000 Chrysler Drive, Auburn Hills, MI 48326;
Ford Motor Company, One American Road, Dearborn, MI 48126;
General Motors Company, 300 Renaissance Center, Detroit, MI 48265;
Honda Motor Co., Ltd., 1–1, 2-chome, Minami-Aoyama, Minato-ku, Tokyo 107–8556, Japan;
Honda North America, Inc., 700 Van Ness Ave., Torrance, CA 90501;
American Honda Motor Co., Inc., 1919 Torrance Blvd., Torrance, CA 90501;
Honda Manufacturing of Alabama, LLC, 1800 Honda Drive, Lincoln, AL 35096;
Honda Manufacturing of Indiana, LLC, 2755 North Michigan Ave., Greensburg, IN 47240;
Honda of America Mfg., Inc., 24000 Honda Pkwy., Marysville, OH 43040;
Hyundai Motor Company, 231 Yangjae-Dong, Seocho-Gu, Seoul 137–938, South Korea;
Hyundai Motor America, 10550 Talbert Ave., Fountain Valley, CA 92708;
Hyundai Motor Manufacturing Alabama, LLC, 700 Hyundai Blvd., Montgomery, AL 36105;
Kia Motors Corp. 231 Yangjae-dong, Seocho-gu, Seoul 137–938, South Korea;
Kia Motors America, Inc., 111 Peters Canyon Rd., Irvine, CA 92606;
Kia Motors Manufacturing Georgia, Inc., 7777 Kia Parkway, West Point, GA 31833;
Mazda Motor Corporation, 3–1 Shinchi, Fuchu-cho, Aki-gun, Hiroshima 730–8670, Japan;
Mazda Motor of America, Inc., 7755 Irvine Center Dr., Irvine, CA 92623;
Daimler AG, Mercedesstrasse 137, 70327 Stuttgart, Germany;
Mercedes-Benz USA, LLC, One Mercedes Dr., Montvale, NJ 07645;
Mercedes-Benz U.S. International, Inc., One Mercedes Dr., Vance, AL 35490;
Nissan Motor Co., Ltd., 1–1, Takashima 1-chome, Nishi-ku, Yokohama-shi, Kanagawa 220–8686, Japan;
Nissan North America, Inc., One Nissan Way, Franklin, TN 37067;
Dr. Ing. h.c. F. Porsche AG, Porscheplatz 1, D–70435 Stuttgart, Germany;
Porsche Cars North America, Inc., 980 Hammond Dr., Ste. 1000, Atlanta, GA 30328;
Saab Automobile AB, 461 80 Trollhattan, Sweden;
Saab Cars North America, Inc., 4327 Delemere Ct., Royal Oak, MI 48073;
Suzuki Motor Corporation, 300 Takatsuka-cho, Minami-ku, Hamamatsu City, 432–8611, Japan;
American Suzuki Motor Corporation, 3251 E. Imperial Hwy., Brea, CA 92821;
Jaguar Land Rover North America, LLC, 555 MacArthur Blvd., Mahwah, NJ 07430;
Jaguar Cars Limited, Abbey Road, Whitley, Coventry CV3 4LF, United Kingdom;
Land Rover, Banbury Road, Gaydon, Warwickshire, CV35 0RR, United Kingdom;
Toyota Motor Corporation, 1 Toyota-cho, Toyota City, Aichi Prefecture 471–8571, Japan;
Toyota Motor North America, Inc., 19001 S. Western Avenue, Torrance, CA 90501;
Toyota Motor Sales, U.S.A., Inc., 19001 S. Western Avenue, Torrance, CA 90501;
Toyota Motor Engineering & Manufacturing North America, Inc., 25 Atlantic Avenue, Erlanger, KY 41018;
Toyota Motor Manufacturing, Indiana, Inc., 4000 Tulip Tree Drive, Princeton, IN 47670;

Toyota Motor Manufacturing, Kentucky, Inc., 1001 Cherry Blossom Way, Georgetown, KY 40324;
Toyota Motor Manufacturing, Mississippi, Inc., 1200 Magnolia Way, Blue Springs, MS 38828;
Volkswagen AG, Brieffach 1849, Wolfsburg, 38436, Germany;
Volkswagen Group of America, Inc., 2200 Ferdinand Porsche Dr., Herndon, VA 20171;
Volkswagen Group of America Chattanooga Operations, LLC, 2200 Ferdinand Porsche Dr., Herndon, VA 20171;
Volvo Car Corporation, 405 31 Goteborg, Sweden;
Volvo Cars of North America, LLC, 1 Volvo Dr., Rockleigh, NJ 07647.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 17, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30186 Filed 11–22–11; 8:45 a.m.]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–11–033]**

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** December 2, 2011 at 11 a.m.

**PLACE:** Room 100, 500 E Street SW., Washington, DC 20436, *Telephone:* (202) 205–2000.

**STATUS:** Open to the public.

**Matters To Be Considered**

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–481 and 731–TA–1190 (Preliminary) (Crystalline Silicon Photovoltaic Cells and Modules from China). The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before December 5, 2011; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 12, 2011.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 18, 2011.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. 2011–30325 Filed 11–21–11; 11:15 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Resolving Claims for Contamination of Mountain Lake in the Presidio of San Francisco

Notice is hereby given that on November 10, 2011, a proposed Consent Decree (''Decree'') in *United States* v. *California Dept. of Transportation,* Civil Action No. 4–09–CV–00437–PJH, was lodged with the United States District Court for the Northern District of California.

In this action the United States alleged that Defendant the California Department of Transportation (''Caltrans'') is in violation of a 1938 permit that authorized construction of Highway 1 (also known as Park Presidio Boulevard) across a portion of the Presidio of San Francisco, because run-off from the highway has contaminated Mountain Lake sediment with lead, copper, zinc and other substances, and drainage facilities for which Caltrans is responsible are degraded and in need of repair or replacement. The Decree resolves these claims and requires Caltrans to pay $5.5 million toward the remediation of Mountain Lake sediment contamination, to pay $4 million for repair or replacement of the overflow pipeline that drains Mountain Lake, and to pay $500,000 toward certain legal costs in pursuing this action. In addition, the Decree requires Caltrans to reconfigure Highway 1 drainage facilities to avoid further discharges of highway run-off to Mountain Lake.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *California Dept. of Transportation,* D.J. Ref. 90–11–3–09037.

During the public comment period, the Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

**Henry Friedman,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2011–30206 Filed 11–22–11; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2011–0124]**

### Advisory Committee on Construction Safety and Health (ACCSH)

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

**ACTION:** Request for nominations of members to serve on ACCSH.

**SUMMARY:** OSHA invites interested persons to submit nominations for membership on ACCSH.

**DATES:** Nominations for ACCSH must be submitted (postmarked, sent, transmitted, or received) by January 23, 2012.

**ADDRESSES:** You may submit nominations and supporting materials by one of the following methods:

*Electronically:* You may submit nominations, including attachments, electronically at *http://www.regulations.gov,* the Federal e-Rulemaking Portal. Follow the online instructions for submitting nominations;

*Facsimile:* If your nomination and supporting materials, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648;

*Mail, express delivery, hand delivery, and messenger or courier service:* You may submit nominations and supporting materials to the OSHA Docket Office, Docket No. OSHA–2011–0124, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). Deliveries by hand, express mail, messenger, and courier service are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

*Instructions:* All nominations and supporting materials must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2011–0124). Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service. For additional information on submitting nominations, see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section below.

OSHA will post submissions in response to this **Federal Register** notice, including personal information provided, without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

*Docket:* To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA–2011–0124 at *http://www.regulations.gov*. All documents in the docket are available in the *http://www.regulations.gov* index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

### For Additional Information

*For press inquiries:* Mr. Frank Meilinger, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999, email address *meilinger.francis2@dol.gov.*

*For general information:* Mr. Francis Dougherty, OSHA, Office of Construction Services, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2020; email address *dougherty.francis@dol.gov*.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary of Labor for Occupational Safety and Health invites interested persons to submit nominations for membership on ACCSH.

*Background.* ACCSH is a continuing advisory committee established under Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA))(40 U.S.C. 3704(d)(4)), to advise the Secretary of Labor (Secretary) in formulating construction safety and health standards, as well as on policy matters arising under the CSA and the Occupational Safety and Health Act of 1970 (OSH Act)(29 U.S.C. 651 *et seq.*). In particular, 29 CFR 1911.10(a) and 1912.3(a) provide that the Assistant Secretary shall consult with ACCSH whenever the Agency proposes any occupational safety or health standard that affects the construction industry.

ACCSH operates in accordance with the CSA, the OSH Act, the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), and regulations issued pursuant to those statutes (29 CFR parts 1911 and 1912, 41 CFR part 102–3). ACCSH generally meets two to four times a year.

*ACCSH membership.* ACCSH consists of 15 members appointed by the Secretary.

The categories of ACCSH membership, the total number of members in each category, and the number of new members to be appointed in each category, are:

- Five members who are qualified by experience and affiliation to present the viewpoint of employers in the construction industry: three new employer representatives will be appointed;
- Five members who are similarly qualified to present the viewpoint of employees in the construction industry: three new employee representatives will be appointed;
- Two representatives of State safety and health agencies: one new representative will be appointed;
- Two public members, qualified by knowledge and experience to make a useful contribution to the work of ACCSH, such as those who have professional or technical experience and competence with occupational safety and health in the construction industry: one new public representative will be appointed; and
- One representative designated by the Department of Health and Human Services and appointed by the Secretary: no new appointment will be made in this category.

ACCSH members normally serve staggered two-year terms, unless they resign, cease to be qualified, become unable to serve, or are removed by the Secretary (29 CFR 1912.3(e)). At the discretion of the Secretary, a qualified ACCSH member whose term has expired may continue to serve until a successor is appointed (29 CFR 1912.3(i)). The Secretary may appoint ACCSH members to successive terms. No member of ACCSH, other than members who represent employers or employees, shall have an economic interest in any proposed rule that affects the construction industry (29 CFR 1912.6).

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse ACCSH membership. Any interested person or organizations may nominate one or more individuals for membership on ACCSH. Interested persons also are invited and encouraged to submit statements in support of particular nominees.

*Submission requirements.* Nominations must include the following information:

(1) Nominee's contact information and current employment or position;

(2) Nominee's resume or curriculum vitae, including prior membership on ACCSH and other relevant organizations and associations;

(3) Categories of membership (employer, employee, public, State safety and health agency) that the nominee is qualified to represent;

(4) A summary of the background, experience, and qualifications that addresses the nominee's suitability for the nominated membership category;

(5) Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience, and expertise in occupational safety and health, particularly as it pertains to the construction industry; and

(6) A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in ACCSH meetings, and has no conflicts of interest that would preclude membership on ACCSH.

*Member selection.* The Secretary will select ACCSH members on the basis of their experience, knowledge, and competence in the field of occupational safety and health, particularly in the construction industry. Information, received through this nomination process, and other relevant sources of information, will assist the Secretary in appointing members to ACCSH. In selecting ACCSH members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish the list of new ACCSH members in the **Federal Register**.

## Public Participation

*Instructions for submitting nominations.* All nominations, supporting documents, attachments, and other materials must identify the Agency name and the docket number for this notice (Docket No. OSHA–2011–0124). You may submit materials: (1) Electronically, (2) by FAX, or (3) by hard copy. You may supplement electronic submissions by attaching electronic files. Alternatively, if you wish to supplement electronic submissions with hard copy documents, you must submit them to the OSHA Docket Office and clearly identify your electronic submission by Agency name and docket number (Docket No. OSHA–2011–0124) so that the Docket Office can attach the materials to the electronic submission.

Because of security-related procedures, materials submitted by mail may experience significant delays. For information about security procedures concerning the delivery of materials by hand, express delivery, and messenger or courier service, please contact the OSHA Docket Office.

OSHA will post all submissions, including personal information provided, in the docket without change; therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. Guidance on submitting nominations and supporting materials is available on-line at *http://www.regulations.gov* and from the OSHA Docket Office.

*Access to the docket.* All submissions in response to this **Federal Register** notice are available in the *http://www.regulations.gov* index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download from that Web page. All submissions, including materials not available on-line, are available for inspection and copying at the OSHA Docket Office. For information about accessing materials in Docket No. OSHA–2011–0124, including materials not available on-line, contact the OSHA Docket Office.

*Access to this* **Federal Register** notice. Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

## Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704), the Federal Advisory Committee Act (5 U.S.C. App. 2), 29 CFR part 1912, 41 CFR part 102–3, and Secretary of Labor's Order No. 4–2010 (75 FR 55335).

Signed at Washington, DC, this November 17, 2011.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2011–30194 Filed 11–22–11; 8:45 am]

BILLING CODE 4510–26–P

# OFFICE OF MANAGEMENT AND BUDGET

## Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Office of Federal Financial Management, Office of Management and Budget.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal of the Standard Form 425, Federal Financial Report and the SF–425A, Federal Financial Report Attachment (collectively known as ''the FFR''). The FFR is used in reporting financial information under grants and cooperative agreements. The public was invited to comment on the renewal of the FFR in a notice published in the **Federal Register** on July 28, 2011 (76 FR 45299). Some of the public comments received in response to July notice resulted in changes to the content of the FFR and FFR instructions. The proposed revised FFR and FFR instructions are at *http://www.whitehouse.gov/omb/grants_standard_report_forms/.*

**DATES:** Comments must be received by December 23, 2011. Due to potential delays in OMB's receipt and processing of mail sent through the US Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

**ADDRESSES:** Comments may be sent through regulations.gov, a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''FFR renewal-2'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503; telephone (202) 395–7844; fax (202) 395–3952; email *mpridgen@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Marguerite Pridgen at the addresses noted above.

**Debra J. Bond,**

*Deputy Controller.*

**SUPPLEMENTARY INFORMATION:** In the Paperwork Reduction Act notice published on July 28, 2011 [76 FR 45299], OMB requested comments on the Standard Form (SF) 425, Federal Financial Report and Standard Form (SF) 425A, Federal Financial Report Attachment (collectively known as ''the FFR''). We received comments from an individual and five organizations. In response to those comments, we made changes to the FFR and FFR instructions. The proposed revised forms are posted at *http://www.whitehouse.gov/omb/grants_standard_report_forms/.*

Following is a summary of the comments we received and our responses.

## I. Comments and Responses

### *A. Agency Implementation*

*Comment:* Several commenters were in favor of the FFR and considered it to be an improvement over the forms it replaced (*i.e.,* SF–269, SF–269A, SF–272, and SF–272A). However, many commenters expressed concern that agencies were customizing the form and/or form instructions. One commenter stated that Federal agencies don't require them to use the FFR. A state association commented that some programs still require recipients to report using the legacy standard forms SF–269 and SF–272.

*Response:* No change has been made. We agree that the FFR should be kept uniform by all agencies as much as possible to allow for consistency in preparation by the grantee community. Agencies are permitted to shade out areas that they do not use, but may not add additional data elements without clearance from OMB. The SF–269, SF–269A, SF–272, and SF–272A forms were not renewed by OMB. Agencies may not require recipients to use expired forms. Recipients are not required to respond to Federal information collections that do not have a current and valid OMB approval number. Agencies must ensure they receive OMB approval when required prior to collecting information from recipients.

*Comment:* A commenter representing a state association commented that the main issue concerning data collection seems to be the lack of standardization across and within Federal agencies regardless of whether the process occurs via forms or other data models. The commenter also stated that if the implementation of the Digital Accountability and Transparency Act of 2011 (''DATA Act'') would include reporting of all grant expenditures, it could lead to the elimination of the FFR or other financial reports.

*Response:* No change has been made. We agree that standardization across and within Federal agencies, whether the process occurs via forms or other data models, improves the information collection process for agencies and recipients. As of the date of this notice, the DATA Act has not been enacted.

*Comment:* Several commenters raised issues with how agency personnel and systems access and process the FFR. A commenter representing a state association stated that some agency personnel that deal with grant closeout do not always have access to the online reports that have been filed with their system. The recipients then fax or mail the FFR to the granting agency. Another commenter provided details on problems experienced with online submissions of these forms through the US Department of Health and Human Service's Payment Management System.

*Response:* Because these issues deal with agency implementation, no change has been made to the form in response to these comments. We have shared the comments with the managers of the Payment Management System who are working to address issues raised by the commenters.

### *B. Form Content, Instructions, and Format*

*Comment:* Several commenters stated that the FFR was an improvement over the previous SF–269. One commenter representing a state association stated that the FFR is a more cumbersome report to prepare than the SF–269 due to the more complicated instructions and the fact that both Federal draws and actual Federal expenditures are on the same report.

*Response:* The general feedback we have received is that the FFR is an improvement over the legacy forms it replaces. In response to several other public comments, we have made changes to the form and form instructions to foster consistency.

*Comment:* A commenter stated that the instruction for program income on line 10e is incorrect. Specifically, the last sentence in instructions refers to 10o rather than 10m.

*Response:* We agree and have made a change to the instruction. The last sentence in the instruction for 10e should read ''10m'' not ''10o''.

*Comment:* A commenter stated that Line 10l is confusing by stating ''total Federal program income'' suggesting it would be clearer to remove the word Federal. As an example, the commenter stated that her grant program is on a reimbursement basis of 75 percent Federal financial participation. So in many instances where program income was earned, the grantee would only report 75 percent of the total amount that the project earned in program income, because that was the Federal portion. In other instances the grantee will report the total amount, so it is not consistent because many interpret the instructions differently.

*Response:* We agree and have made a change to the instruction. Line 10l is intended to collect the total Federal share of program income earned. Line 10l has been changed to ''Total Federal Share of Program Income Earned.'' The instruction for line 10l has been changed to ''Enter the amount of the Federal share of program income earned.''

*Comment:* Several commenters expressed support for certain features of the FFR form while some commenters expressed support for certain features of the legacy SF–269. For instance, one commenter stated that there was value to having the cumulative totals on the form (SF–269) while another commenter stated that it is better that the cumulative totals not be on the report (FFR). Another commenter stated that ''previously reported'' and ''this period'' columns that were on the SF–269 made it simpler to reconcile and monitor the changes over each quarter while another commenter expressed support for the FFR not having these columns. One commenter stated that the FFR doesn't allow for as much oversight on what is occurring financially on each report, such as if any refunds, credits, and type of match, unless the grantee uses the Remarks box. Another commenter expressed support for the indirect expense field being expanded to accommodate split rates.

*Response:* No change has been made. The feedback we have received since the FFR has been implemented is that it is easier for grantees to complete and for agency staff to review than the SF–269. For example, the intent of a single column on the FFR was to keep the form as simplified as possible and to reduce the reporting burden on grantees. Federal agencies and recipients are still able to use the data in the form to compute the changes in amounts from the previous report. While we could have added back those columns and other data elements, we are concerned that the burden of collecting and reporting the data may outweigh the utility of the data.

*Comment:* A commenter from a Federal agency expressed support for the FFR and recommended that OMB clarify its position regarding computation of interest earned on advances of grant funds and add corresponding data elements and instructions to the FFR.

*Response:* We agree in part with the comment. We have not added any additional data elements to the form in an effort to minimize reporting burden. We will reexamine the need for requiring recipients to report interest when we review other requests for changes to the form.

Recent findings in Federal audits of recipient cash management policies and procedures identified issues concerning the methods that recipients used to compute the amount of interest earned on Federal Cash on Hand. Auditors found that some recipients subtracted the aggregated amount of disbursements they had made under all of their Federal awards from the aggregated amount of payments they had received from the Government under those awards to compute the amount of Cash on Hand from all payments, which then became the basis for computing the amount of interest to be remitted. Recipients included in the computation awards paid by the reimbursement method, as well as awards paid by the advance method for which disbursements at the time of the computation exceeded the amount of the advances they had requested and received from the Government. For reimbursement method awards, the recipients had used their own funds to cover cash needs, pending receipt of future payments of Federal funds. The calculated balances of Federal Cash on Hand for those awards were negative, which offset positive balances for other Federal awards and reduced the computed amount of Federal Cash on Hand for all Federal awards in the aggregate. It therefore also reduced the computed amount of interest to be remitted to the Government. In light of these matters, and the commenter's recommendations, we have added and instruction to line 10c ''Cash on Hand'' to read as follows:

''Use of Aggregated Amounts of Disbursements and Advances. A recipient must compute the amount of Federal Cash on Hand due to undisbursed advance payments using the same basis that it uses in requesting the advances. Therefore, in doing the computation, a recipient may only aggregate the amounts of its advance payments received and disbursements of Federal funds under multiple awards only if it is authorized to aggregate its requests for advance payments in the same manner. The following examples should help to illustrate what is permissible:

- If a recipient is authorized to consolidate its requests for advance payment for a group of awards—i.e., it requests a single amount to cover its anticipated cash needs for the awards in the aggregate, then it may similarly compute the Cash on Hand by subtracting the aggregated amount of disbursements from the aggregated amount of the advances received for those awards.
- If the same recipient is required to request payment individually for other Federal awards, it must compute the Cash on Hand for each of those awards on an award by award basis and correspondingly report these awards on separate FFRs.

Exclusion of Negative Balances of Cash on Hand. In computing the total amount of Cash on Hand for its Federal awards in the aggregate, a recipient must exclude any negative balance of Federal Cash on Hand for an individual award or for a group of awards paid through a consolidated payment request. This includes each award paid by the reimbursement method and any award using the advance method that has disbursements in excess of advances received to date. The computation must include only positive balances of cash on hand.''

On the form itself, we added the word ''combined'' to the instruction line 10 ''Transactions'' which now reads ''(*Use lines a-c for single or combined multiple grant reporting*)'' and added the word ''separately'' to the instruction for Federal Cash which now reads ''Federal Cash (To report multiple grants separately, also use FFR Attachment).''

*Comment:* A commenter expressed concern with the limited amount of space available on the FFR for inputting data such as dates and indirect cost information.

*Response:* We have not made changes to the form. The Excel version of the FFR on the OMB Web site is the recommended version to use since it allows the reporter to adjust the cell and column sizes as appropriate. As all agencies move to electronic entry and submission, this problem should cease to be an issue.

*C. Timing of Submission*

*Comment:* A commenter stated that quarterly reporting on the FFR is better for reconciling the grant close-out because it is cumulative for all the grant years included with each letter of credit. However, there is an issue with timing because of transactions that occur before the grant closing, but that are not reported until the financial department's reporting quarter end date. The cash transactions portion of the SF–425 is still quarterly, but is populated more quickly for reference during the process of reconciling a grant for close-out.

*Response:* No change has been made. This particular issue was raised in the commenter's discussion of how the US Department of Health and Human Services' Payment Management System processes the reports and was referred to the system manager for review.

*Comment:* A commenter stated that FFR due date (the 30th following the end of the quarter) is the same day or 15 days prior to several Federal reports' due date, which is 45 days. The commenter stated that this is problematic because it forces the grantee to report draws or prior quarter disbursements rather than current, and the commenter has not been able to consistently determine if the report can be amended during the quarter.

*Response:* No change has been made. The report may not be amended during the quarter. The grantee has 30 days past the quarter end date to report expenditures. If information reported is not current, the grantee is able to report remaining expenditures on the following quarter.

*D. Reporting Burden*

*Comment:* Several commenters expressed concern that FFR does not lessen their reporting burden.

*Response:* No change has been made. The FFR is the combination of the SF–272 and SF–269 forms streamlined into one form. The consensus has been that recipients prefer to fill out one form instead of two. We recognize that a recipient may be required to report additional financial data through other collection instruments, and we are seeking ways to reduce overall reporting burden in the future by scrutinizing agency requests to collect this additional financial data.

**II. Next Steps**

Once the revised FFR is approved by OMB, agencies shall adopt it for use on their grants and cooperative agreements, and where appropriate, on other assistance agreements. Agencies that use customized (non-standard) forms to collect financial data from their recipients should discuss the need to continue use of the customized forms with OMB's Office of Federal Financial Management prior to seeking clearance or renewal from OMB's Office of Information and Regulatory Affairs.

*OMB Control No.:* 0348–0061.

*Title:* Federal Financial Report.

*Form No.:* SF–425, SF–425A.

*Type of Review:* Renewal of a currently approved collection.

*Respondents:* States, Local Governments, Universities, Non-Profit Organizations.

*Number of Responses:* 1,200,000.

*Estimated Time per Response:* 60 minutes.

Needs and Uses: The SF–425 is used to collect financial information for recipients of grants and cooperative agreements and related transactions under nonconstruction grant programs.

[FR Doc. 2011–30283 Filed 11–22–11; 8:45 am]

BILLING CODE 3110–01–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used to permit the public and other Federal agencies to use its official seal(s) and/or logo(s). The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before January 23, 2012 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (ISP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001; or faxed to (301) 713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number (301) 837–1694, or fax number (301) 713–7409.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Use of NARA Official Seals.

*OMB number:* 3095–0052.

*Agency form number:* N/A.

*Type of review:* Regular.

*Affected public:* Business or other for-profit, Not-for-profit institutions, Federal government.

*Estimated number of respondents:* 10.

*Estimated time per response:* 20 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 3 hours.

*Abstract:* The authority for this information collection is contained in 36 CFR 1200.8. NARA's three official seals are the National Archives and Records Administration seal; the National Archives seal; and the Nationals Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. Occasionally, when criteria are met, we will permit the public and other Federal agencies to use our official seals. A written request must be submitted to use the official seals, which we approve or deny using specific criteria.

Dated: November 14, 2011.

**Michael L. Wash,**

*Executive for Information Services/CIO.*

[FR Doc. 2011–30242 Filed 11–22–11; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Buy American Waiver Under the American Recovery and Reinvestment Act of 2009

**AGENCY:** National Science Foundation (NSF).

**ACTION:** Notice.

**SUMMARY:** NSF is hereby granting a limited program-specific exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115, 303 (2009), for incidental items that comprise, in total, an amount that is no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project funded through the Academic Research Infrastructure Recovery and Reinvestment Program.

**DATES:** November 23, 2011.

**ADDRESSES:** National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen Clark Baukin, Division of Grants and Agreements, (703) 292–8210.

**SUPPLEMENTARY INFORMATION:** In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on July 20, 2011, the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency on 27 May 2010, granted a de minimis exemption of section 1605 of the Recovery Act (Buy American provision) with respect to incidental items that comprise, in total, an amount that is no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project funded through the Academic Research Infrastructure—Recovery and Reinvestment Program. The basis for this exemption is section 1605(b)(1) of the Recovery Act, in that executing individual exemptions for many of the incidental items used in construction and renovation, such as nuts, bolts, wires, cables, switches, *etc.* is not in the public interest. The total cost of incidental items requiring use of this limited exemption is expected to be less than 5% of the total Recovery Act funds awarded under the Academic Research Infrastructure—Recovery and Reinvestment Program or less than $10,000,000. Award terms and conditions still require awardees to Buy American to the extent practicable for items within the de minimis part of the projects.

### I. Background

The Recovery Act appropriated $200 million to NSF for projects being funded by the Foundations Academic Research Infrastructure—Recovery and Reinvestment Program (ARI). This Program funds renovation of infrastructure for research at academic institutions and non-profit research organizations.

Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act ''may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.''

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register.** Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

### II. Finding That Individual Exemptions for Incidental Items Are Not in the Public Interest

Recovery Act projects funded by the Academic Research Infrastructure—Recovery and Reinvestment Program (ARI) typically involve the use of literally thousands of miscellaneous, generally low-cost items that are essential for, but incidental to, the construction, alteration, maintenance or repair of a public building or public work and are incorporated into the physical structure of the project, such as nuts, bolts, wires, cables, and switches. For many of these incidental items, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable in the normal course of business. More importantly, the miscellaneous character of these items, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the project.

Requiring individual waivers for incidental items would be time prohibitive and overly burdensome for both awardees and for the National Science Foundation (NSF) in carrying out the Recovery Act. Therefore, a nationwide limited de minimis waiver of incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project is justified in the public interest.

Issuance of this limited project-specific exemption recognizes NSF's commitment to expeditious expenditure of Recovery Act dollars, by balancing the need for expeditious and efficient implementation of the Recovery Act while still applying the Buy American provisions for materials that are greater than a de minimis part of the projects.

With a similar purpose, on July 26, 2011, NSF published a de minimis exemption from the Buy American requirement for incidental items in a ship construction project [76 FR 44613].

### III. Exemption

On July, 20, 2011, and under the authority of section 1605(b)(1) of the Public Law 111n5 and delegation order dated 27 May 2010, with respect to the Academic Research Infrastructure—Recovery and Reinvestment Program awards funded by NSF, the NSF Chief Financial Officer granted a limited exemption (a waiver under the Recovery Act Buy American provisions) for incidental items that comprise, in total, a de minimis amount of the project; that is, any such incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project that is funded under the Academic Research Infrastructure—Recovery and Reinvestment Program.

Other Federal agencies have issued similar de minimis exemptions. For example, the Department of Energy issued a de minimis exemption relating to its Office of Energy Efficiency and Renewable Energy [75 FR 35447 (June 22, 2010)].

Dated: November 14, 2011.

**Lawrence Rudolph,**

*General Counsel.*

[FR Doc. 2011–30289 Filed 11–22–11; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Programs and Plans (CPP) Task Force on Unsolicited Mid-Scale Research (MS), pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

**DATE AND TIME:** November 29, 2011; 4 p.m.–5 p.m. EST.

**SUBJECT MATTER:** (1) Discussion of the proposed revision to the Task Force on Unsolicited Mid-Scale Research (MS) Task Force Charge timeline; (2) Discussion of the revised MS Task Force report outline; (3) Discussion of NSF mid-scale award data analysis.

**STATUS:** Open.

**LOCATION:** This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office [call (703) 292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

**UPDATES AND POINT OF CONTACT:** Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Matthew B. Wilson, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. *Telephone:* (703) 292–7000.

**Ann Bushmiller,**

*Senior Counsel to the National Science Board.*

[FR Doc. 2011–30321 Filed 11–21–11; 11:15 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Task Force on Merit Review, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

**DATE AND TIME:** Monday, November 28, 2011, from 1 to 2 p.m., EST.

**SUBJECT MATTER:** Discussion of the draft Merit Review Criteria report.

**STATUS:** Open.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A room will be available for the public and NSF staff to listen-in on this teleconference meeting. All visitors must contact the Board Office at least *one day* prior to the meeting to arrange for a visitor's badge and obtain the room number. Call (703) 292–7000 to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive their visitor's badge on the day of the teleconference.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Kim Silverman, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. *Telephone:* (703) 292–7000.

**Ann Bushmiller,**

*Senior Counsel to the National Science Board.*

[FR Doc. 2011–30371 Filed 11–21–11; 4:15 pm]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 23, 2011. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Polly A. Penhale at the above address or (703) 292–7420.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

**1. Applicant**

Permit Application: 2012–011.

Daniel P. Costa, Department of Ecology and Evolutionary Biology, University of California—Santa Cruz, Long Marine Lab, 100 Shaffer Road, Santa Cruz, CA 95060.

**Activity for Which Permit Is Requested**

Take and Enter Antarctic Specially Protected Areas. The applicant plans to enter the Antarctic Specially Protected Areas of Cape Evans (ASPA 155), Backdoor Bay (ASPA 157), and Hut Point (ASPA 158) to collect 1 $cm^2$ samples of skin and fur, and 1 whisker from up to 50 dead seals caught during the early 1900s by the explorers and are found in and around the historic huts located in these protected areas. Naturally occurring stable isotopes of carbon ($\delta^{13}C$) and nitrogen ($\delta^{15}N$) have been increasingly used to study trophic relationships and feeding habits of marine mammals, based on the demonstration that isotopic ratios in tissue samples from a given species are correlated with those of the prey items included in the diet. As stable isotope composition does not change over time, the isotope signature of seals collected by the historic explorers early in the 20th century will reflect the diet of Weddell seals at that time. These data will be compared to the isotopic signature of Weddell seals in the Ross Sea today. Such data may provide evidence of a potential shift in the diet of this apex predator that might be indicative of ecosystem change.

**Location**

Cape Evans (ASPA 155), Backdoor Bay (ASPA 157), and Hut Point (ASPA 158).

**Dates**

December 1, 2011 to December 31, 2012.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 2011–30169 Filed 11–22–11; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on December 15, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Thursday, December 15, 2011—8:30 a.m. until 5 p.m.**

The Subcommittee will review the proposed rule for 50.46c, ''Emergency Core Cooling System Performance During Loss-of-Coolant Accidents.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone (301) 415–7111 or *Email: Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were

published in the **Federal Register** on October 17, 2011, (76 FR 64127–64128).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone (240) 888–9835) to be escorted to the meeting room.

Dated: November 17, 2011.

**Antonio F. Dias,**

*Technical Advisor, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2011–30238 Filed 11–22–11; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### CFC–50 Commission

**AGENCY:** Office of Personnel Management.

**ACTION:** Establishment of advisory committee.

**SUMMARY:** The CFC–50 Advisory Commission will hold its second meeting on December 6, 2011, at the time and location shown below. The Commission shall advise the Director of the U.S. Office of Personnel Management (OPM) on strengthening the integrity, the operation and effectiveness of the Combined Federal Campaign (CFC) to ensure its continued growth and success. The Commission is an advisory committee composed of Federal employees, private campaign administrators, charitable organizations and ''watchdog'' groups. The Commission is co-chaired by Thomas Davis and Beverly Byron.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Commission at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

**DATES:** December 6, 2011 at 2 p.m.

Location: U.S. Office of Personnel Management, Theodore Roosevelt Executive Conference Room, 5th Floor, Theodore Roosevelt Building, 1900 E St. NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Keith Willingham, Director, Combined Federal Campaign, U.S. Office of Personnel Management, 1900 E St. NW., Suite 6484, Washington, DC 20415. Phone (202) 606–2564 FAX (202) 606–5056 or email at *cfc@opm.gov.*

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2011–30240 Filed 11–22–11; 8:45 am]

**BILLING CODE 6325–46–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. R2012–4; Order No. 981]**

### International Mail Contract

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to enter into an additional bilateral agreement with HongKong Post Group. This document invites public comments on the request and addresses several related procedural steps.

**DATES:** *Comments are due:* November 30, 2011, 4:30 p.m., Eastern Time

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:**

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

### I. Introduction

On November 14, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.,* and Order No. 549, that it has entered into a bilateral agreement with HongKong Post Group (HongKong Post 2012 Agreement or Agreement), which it seeks to include in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.[1] The Notice concerns the portion of a bilateral agreement with the HongKong Post Group for inbound competitive services that the Postal Service contends is similar and functionally equivalent to agreements already included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 2.

In support of its Notice, the Postal Service filed two attachments as follows: Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal and Attachment 2—a redacted copy of the HongKong Post 2012 Agreement. The Postal Service also provided a redacted version of the supporting financial documentation as a separate Excel file.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and the Strategic Bilateral Agreement between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group–United States Postal Service Letter Post Bilateral Agreement (CPG Agreement). In Order No. 700, the Commission approved the functionally equivalent HongKong Post Agreement (HongKong Post Agreement).[2] In Order 871, the Commission approved the functionally equivalent China Post 2011 Agreement.[3]

*HongKong Post 2012 Agreement.* The Postal Service and HongKong Post, the postal operator for Hong Kong are parties to the HongKong Post 2012 Agreement. The Agreement covers, *inter alia,* the delivery of inbound Letter Post,

[1] Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 14, 2011 (Notice); *see also* Docket Nos. MC2010–35, R2010–5 and R2010–6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order 549).

[2] *See* Docket No. R2011–4, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011 (Order No. 700).

[3] *See* Docket No. R2011–7, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 23, 2011 (Order 871).

in the form of letters, flats, small packets, bags, and International Registered Mail service for Letter Post. It also includes an ancillary service for delivery confirmation scanning with Letter Post small packets. Notice at 4; Attachment 2 at 10. The Postal Service states that the proposed inbound market dominant rates are intended to become effective on January 1, 2012, and to remain in effect for 1 year. *Id.* at 3; Attachment 2 at 6. The HongKong Post 2012 Agreement provides that it becomes effective after all regulatory approvals have been received, notification to HongKong Post, and mutual agreement on an effective date. *Id.,* Attachment 2 at 1. The Agreement however, may be terminated by either party on no less than 30 days' written notice. *Id.,* Attachment 2 at 2.

*Requirements under part 3010.* The Postal Service states that the projected financial performance of the HongKong Post 2012 Agreement is provided in the Excel file included with its filing. It contends that improvements should enhance mail efficiency and other functions for Letter Post items under the Agreement. *Id.* at 4–5.

The Postal Service asserts that the Agreement should not cause unreasonable harm in the marketplace since it is unaware of any significant competition in this market. *Id.* at 5–6.

Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this Agreement through its Annual Compliance Report. While indicating its willingness to provide information on mailflows within the annual compliance review process, the Postal Service proposes that no special data collection plan be established for this Agreement. With respect to performance measurement, it requests that the Commission exempt the HongKong Post 2012 Agreement from separate reporting requirements under 39 CFR 3055.3(a)(3) as determined in Order Nos. 549, 700, and 871 for the Agreements in Docket Nos. R2010–5 and R2010–6, R2011–4, and R2011–7, respectively. *Id.* at 7.

The Postal Service advances reasons why the instant Agreement is functionally equivalent to the previously filed CPG Agreement, TNT Agreement, HongKong Post Agreement and China Post 2011 Agreement. It contends that it contains the same attributes and methodology and fits within the Mail Classification Schedule language for the Inbound Multi-Service Agreements with the Foreign Postal Operators 1 product. *Id.* at 8–10. Additionally, it states that the HongKong Post 2012 Agreement includes similar terms and conditions, *e.g.,* is with a foreign postal operator, conforms to a common description, and relates to rates for Letter Post tendered from the postal operator's territory. *Id.* at 9.

The Postal Service identifies specific terms that distinguish the instant Agreement from the three existing agreements. These distinctions include clarifying legal requirements, revised rates, term, signatory, and other changes. *Id.* at 10–11. The Postal Service contends that the instant Agreement is nonetheless functionally equivalent to existing agreements. *Id.* at 11.

In its Notice, the Postal Service maintains that certain portions of the Agreement, prices, and related financial information should remain under seal. *Id.* at 11–12; *id.* Attachment 1.

The Postal Service concludes that the HongKong Post 2012 Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 12.

## II. Notice of Filing

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010.40. Comments are due no later than November 30, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

## III. Ordering Paragraphs

*It is ordered*:

1. The Commission establishes Docket No. R2012–4 to consider matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than November 30, 2011.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2011–30279 Filed 11–22–11; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–49; Order No. 978]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Waverly, Washington post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:**

November 18, 2011: Administrative record due (from Postal Service);

December 12, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 3, 2011, the Commission received a petition for review of the Postal Service's determination to close the Waverly post office in Waverly, Washington. The petition for review was filed by Evelyn Heinevetter (Petitioner) and is postmarked October 26, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–49 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 8, 2011.

*Categories of issues apparently raised.* Petitioner contends that (1) the Postal Service failed to consider the effect of

the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)); and (4) there are factual errors contained in the Final Determination.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is November 18, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is November 18, 2011.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 12, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 18, 2011.
2. Any responsive pleading by the Postal Service to this notice is due no later than November 18, 2011.
3. The procedural schedule listed below is hereby adopted.
4. Pursuant to 39 U.S.C. 505, Brent W. Peckham is designated officer of the Commission (Public Representative) to represent the interests of the general public.
5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| November 3, 2011 | Filing of Appeal. |
| November 18, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 18, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 12, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 8, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| December 28, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 12, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 19, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| February 23, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–30257 Filed 11–22–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–48; Order No. 971]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Elmo, Missouri post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** November 17, 2011: Administrative record due (from Postal Service);

December 12, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-*

*online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 2, 2011, the Commission received a petition for review of the Postal Service's determination to close the Elmo post office in Elmo, Missouri. The petition for review was filed by Joyce Ecker (Petitioner) and is postmarked October 27, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–48 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 7, 2011.

*Categories of issues apparently raised.* Petitioner contends that (1) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)); and (2) there are factual errors contained in the Final Determination.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is November 17, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is November 17, 2011.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 12, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 17, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 17, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Getachew Mekonnen is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| November 2, 2011 | Filing of Appeal. |
| November 17, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 17, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 12, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 7, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| December 27, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 11, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 18, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| February 24, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–30241 Filed 11–22–11; 8:45 am]
**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–47; Order No. 970]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.
**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Scottville, Illinois post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** November 15, 2011: Administrative record due (from Postal Service); December 12, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on October 31, 2011, the Commission received a petition for review of the Postal Service's determination to close the Scottville post office in Scottville, Illinois. The petition for review was filed by Mark Keeney, Mayor (Petitioner) and is postmarked October 26, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–47 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 5, 2011.

*Categories of issues apparently raised.* Petitioner contends that (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is November 15, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is November 15, 2011.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 12, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 15, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 15, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Derrick Dennis is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**
*Acting Secretary.*

PROCEDURAL SCHEDULE

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|---|---|
| October 31, 2011 ..... | Filing of Appeal. |

PROCEDURAL SCHEDULE—Continued

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| November 15, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 15, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 12, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 5, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| December 27, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 11, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 18, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| February 23, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–30231 Filed 11–22–11; 8:45 a.m.]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–46; Order No. 969]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Morgan City, Mississippi post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:**

November 15, 2011: Administrative record due (from Postal Service);

December 12, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene.

*See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received two petitions for review of the Postal Service's determination to close the Morgan City post office in Morgan City, Mississippi. The first petition for review received October 31, 2011, was filed by Wayne E. Walker. The second petition for review received November 4, 2011, was filed by Martha Mullen, Mayor. The earliest postmark date is October 25, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–46 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 5, 2011.

*Categories of issues apparently raised.* Petitioners contend that (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A(iii)); and (3) there are factual errors contained in the Final Determination.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is November 15, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is November 15, 2011.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 12, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate

issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 15, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 15, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James Callow is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

PROCEDURAL SCHEDULE

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|---|---|
| October 31, 2011 | Filing of Appeal. |
| November 15, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 15, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 12, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 5, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| December 27, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 11, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 18, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| February 22, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–30210 Filed 11–22–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–50; Order No. 979]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Pace, Mississippi post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** November 18, 2011: Administrative record due (from Postal Service); December 12, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received two petitions for review of the Postal Service's determination to close the Pace post office in Pace, Mississippi. The first petition for review received November 3, 2011, was filed by Robert LeFlore, Sr., Mayor. The second petition for review received November 7, 2011, was filed by Curtissia W. Allen. The earliest postmark date is October 18, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–50 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 8, 2011.

*Categories of issues apparently raised.* Petitioners contend that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is November 18, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is November 18, 2011.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-*

*dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 12, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 18, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 18, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Natalie Ward is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

PROCEDURAL SCHEDULE

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|---|---|
| November 3, 2011 | Filing of Appeal. |
| November 18, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| November 18, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| December 12, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| December 8, 2011 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| December 28, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| January 12, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| January 19, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| February 15, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–30258 Filed 11–22–11; 8:45 am]

BILLING CODE 7710–FW–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Regulation G; OMB Control No. 3235–0576; SEC File No. 270–518.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation G (17 CFR 244.100–244.102) under the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78a *et seq.*) requires Exchange Act registrants that discloses or releases financial information in a manner that is calculated or presented other than in accordance with generally accepted accounting principles (''GAAP'') to provide a reconciliation of the non-GAAP financial information to the most directly comparable GAAP financial measure. Regulation G implemented the requirements of Section 401 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7261). We estimate that approximately 14,000 public companies must comply with Regulation G approximately six times a year for a total of 84,000 responses annually. We estimated that it takes approximately 0.5 hours per response (84,000 × 0.5 hours) for a total reporting burden of 42,000 hours annually.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 18, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30225 Filed 11–22–11; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 17Ac2–1; SEC File No. 270–95; OMB Control No. 3235–0084 and Form TA–1.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17Ac2–1 (17 CFR 240.17Ac2–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ac2–1, pursuant to Section 17A(c) of the Exchange Act, generally requires transfer agents to register with their Appropriate Regulatory Agency (''ARA''), whether the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, and to amend their registrations if the information becomes inaccurate, misleading, or incomplete.

Paragraph 1 of Rule 17Ac2–1, requires transfer agents to file a Form TA–1 application for registration with the Commission where the Commission is their ARA. Transfer agents must also file an amended Form TA–1 application for registration if the existing Form TA–1 becomes inaccurate, misleading, or incomplete. The Form TA–1s must be filed with the Commission electronically, absent an exemption, on EDGAR pursuant to Regulation S–T (17 CFR part 232).

The Commission receives on an annual basis approximately 190 applications for registration on Form TA–1 from transfer agents required to register with the Commission. Included in this figure are amendments to Form TA–1 as required by Paragraph (c) of Rule 17Ac2–1 to address information that has become inaccurate, misleading, or incomplete. Based on past submissions, the staff estimates that the average number of hours necessary to comply with the requirements of Rule 17Ac2–1 and Form TA–1 is one and one-half hours with a total burden of 285 hours per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

The Commission 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. Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: November 18, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30220 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 12d2–1; OMB Control No. 3235–0081; SEC File No. 270–98.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

• Rule 12d2–1 (17 CFR 240.12d2–1) Suspension of Trading.

On February 12, 1935, the Commission adopted Rule 12d2–1,[1] under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et seq.*) (''Act''), to establish the procedures by which a national securities exchange may suspend from trading a security that is listed and registered on the exchange under Section 12(d) of the Act.[2] Under Rule 12d2–1, an exchange is permitted to suspend from trading a listed security in accordance with its rules, and must promptly notify the Commission of any such suspension, along with the effective date and the reasons for the suspension.

Any such suspension may be continued until such time as the Commission may determine that the suspension is designed to evade the provisions of Section 12(d) of the Act and Rule 12d2–2 thereunder.[3] During the continuance of such suspension under Rule 12d2–1, the exchange is required to notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under Rule 12d2–1, the exchange must notify the Commission promptly of the effective date of such restoration.

The trading suspension notices serve a number of purposes. First, they inform the Commission that an exchange has suspended from trading a listed security or reintroduced trading in a previously suspended security. They also provide the Commission with information necessary for it to determine that the suspension has been accomplished in accordance with the rules of the exchange, and to verify that the exchange has not evaded the requirements of Section 12(d) of the Act and Rule 12d2–2 thereunder by improperly employing a trading suspension. Without Rule 12d2–1, the Commission would be unable to fully implement these statutory responsibilities.

There are 15 national securities exchanges that are subject to Rule 12d2–1. The burden of complying with Rule 12d2–1 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, Inc., the NASDAQ Stock Market, and the American Stock Exchange LLC than on the other exchanges.[4] However, for purposes of this filing, the Commission staff has assumed that the number of responses is evenly divided among the exchanges. There are approximately 1,500 responses under Rule 12d2–1 for the purpose of suspension of trading from the national securities exchanges each year, and the resultant aggregate annual reporting hour burden would be, assuming on average one-half reporting hour per response, 750 annual burden hours for all exchanges. The related

[1] *See* Securities Exchange Act Release No. 98 (February 12, 1935).

[2] *See* Securities Exchange Act Release No. 7011 (February 5, 1963), 28 FR 1506 (February 16, 1963).

[3] Rule 12d2–2 prescribes the circumstances under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act, and provides the procedures for taking such action.

[4] In fact, some exchanges do not file any trading suspension reports in a given year.

costs associated with these burden hours are $145,125.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Comments should be directed to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: November 18, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30219 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Extension of Existing Collection; Comment Request

*Upon Written Request, Copies Available From:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 9b–1; OMB Control No. 3235–0480; SEC File No. 270–429.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for the following rule: Rule 9b–1, Options Disclosure Document (17 CFR 240.9b–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 9b–1 (17 CFR 240.9b–1) sets forth the categories of information required to be disclosed in an options disclosure document (''ODD'') and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b–1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b–1 requires a broker-dealer to furnish to each customer an ODD and any amendments, prior to accepting an order to purchase or sell an option on behalf of that customer.

There are 9 options markets that must comply with Rule 9b–1. These respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file approximately 3 amendments per year. The staff calculates that the preparation and filing of amendments should take no more than eight hours per options market. Thus, the total compliance burden for options markets per year is 216 hours (9 options markets × 8 hours per amendment × 3 amendments). The estimated cost for an in-house attorney is $354 per hour,[1] resulting in a total cost of compliance for these respondents of $76,464 per year (216 hours at $354 per hour).

In addition, approximately 1,500 broker-dealers must comply with Rule 9b–1. Each of these respondents will process an average of 3 new customers for options each week and, therefore, will have to furnish approximately 156 ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual compliance burden for each of these respondents of 78 minutes or 1.3 hours. Thus, the total compliance burden per year is 1,950 hours (1,500 broker-dealers × 1.3 hours). The estimated cost for a general clerk of a broker-dealer is $50 per hour,[2] resulting in a total cost of compliance for these respondents of $97,500 per year (1,950 hours at $50 per hour).

The total compliance burden for all respondents under this rule (both options markets and broker-dealers) is 2,166 hours per year (216 + 1,950), and the total compliance cost is $173,964 ($76,464 + $97,500).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Comments should be directed to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: November 18, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30218 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[1] The $354 per hour figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[2] The $50 per hour figure for a General Clerk is from SIFMA's *Office Salaries in the Securities Industry 2010,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff believes that the ODD would be mailed or electronically delivered to customers by a general clerk of the broker-dealer or some other equivalent position.

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 29864; 812–13936]**

## Bandon Capital Management, LLC and Northern Lights Fund Trust; Notice of Application

November 17, 2011.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

**APPLICANTS:** Bandon Capital Management, LLC (''Bandon Capital'' or the ''Adviser'') and Northern Lights Fund Trust (the ''Trust'').

**DATES:** *Filing Dates:* The application was filed on August 4, 2011, and amended on November 15, 2011.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application 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 December 12, 2011, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Bandon Capital, 317 SW. Alder Street, Suite 1110, Portland, OR 97204; Trust: 4020 South 147th Street, Omaha, NE 68137.

**FOR FURTHER INFORMATION CONTACT:** Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and as of November 9, 2011 was comprised of 123 individual registered series, including the Bandon Isolated Alpha Fixed Income Fund (the ''Bandon Fund''), and 10 additional series that are in registration. The Bandon Fund currently employs two unaffiliated investment subadvisers (each, a ''Subadviser'').[1] Bandon Capital, an Oregon limited liability company, is, and each other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). Bandon Capital serves as the investment adviser of the Bandon Fund, and an Adviser will serve as investment adviser to each future Fund, pursuant to an investment advisory agreement (''Advisory Agreement''). The Bandon Fund's Advisory Agreement was approved by the Trust's board of trustees (together with the board of directors or trustees of any other Fund, the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (''Independent Trustees'') and by the initial shareholder of the Bandon Fund.

2. Under the terms of the Bandon Fund's Advisory Agreement, the Adviser is responsible for the overall management of the Bandon Fund's business affairs and selecting investments according to the Bandon Fund's investment objectives, policies and restrictions. For the investment management services that it provides to the Bandon Fund, the Adviser receives the fee specified in the Advisory Agreement. The Advisory Agreement also permits the Adviser to retain one or more subadvisers for the purpose of managing the investments of all or a portion of the assets of the Bandon Fund. Pursuant to this authority, the Adviser has entered into investment subadvisory agreements with two Subadvisers to provide investment advisory services to the Bandon Fund (such agreements with Subadvisers, ''Subadvisory Agreements''). Each of these two Subadvisers is, and each future Subadviser will be, registered as an investment adviser under the Advisers Act. The Adviser will supervise, evaluate and allocate assets to the Subadvisers, and make recommendations to the Board about their hiring, retention or release, at all times subject to the authority of the Board. The Adviser will compensate each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Adviser, other than by reason of serving as a subadviser to one or more of the Funds (''Affiliated Subadviser'').

### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of securities in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Section 6(c) 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 the Act, or from any rule thereunder, if 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. Applicants state that the requested relief meets this standard.

[1] Applicants also request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included within the term ''Adviser''); (b) uses the manager of managers structure (''Manager of Managers Structure'') described in the application; and (c) complies with the terms and conditions of the application (together with the Bandon Fund, the ''Funds'' and each, individually, a ''Fund''). For the purposes of the requested order, ''successor'' is limited to those one or more entities that would result from a reorganization into another jurisdiction or a change in the type of business organization. All existing entities that currently intend to rely on the requested order are named as applicants, and the Bandon Fund is the only series that currently intends to rely on the requested order. If the name of any Fund contains the name of a Subadviser, the name of the Adviser will precede the name of the Subadviser.

3. Applicants assert that the shareholders expect the Adviser and the Board to select the Subadvisers for the Funds that are best suited to achieve each Fund's investment objective. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by the Adviser. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreements and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Subadviser, shareholders of the affected Fund will be furnished all information about the new Subadviser that would be included in a proxy statement. To meet this obligation, each Fund will provide shareholders within 90 days of the hiring of a new Subadviser an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30226 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65787; File No. SR–FINRA–2011–044]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA's Code of Procedure

November 18, 2011.

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 November 8, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA's Code of Procedure that includes: (1) Allowing service of a complaint (and notices of certain expedited proceedings) on counsel or another person authorized to represent others when such representative agrees to accept service; (2) permitting electronic filing of papers with an adjudicator; (3) decreasing the number of copies required to be filed with the adjudicator; (4) giving counsel to the National Adjudicatory Council (''NAC'') authority to set the specifications and the number of copies of all papers to be filed with the NAC; (5) requiring an attorney seeking to withdraw from a disciplinary case to file a motion before withdrawal would be approved; (6) adding an additional, permissive subject for a pre-hearing conference; (7) allowing FINRA staff to set the rate for copies; (8) allowing Hearing Officers to manage the parties' pre-hearing submissions to reduce and eliminate duplicative filings; (9) giving Hearing Panels and the NAC additional

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

flexibility as to required statements in decisions; (10) clarifying that the Review Subcommittee may review certain default decisions; (11) allowing an adjudicator to cancel a previously scheduled oral argument; (12) clarifying the procedure for when an appealing party does not participate in a disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel; (13) allowing a Hearing Panel in an eligibility proceeding to extend time limits for the filing of any papers without consent of all the parties; and (14) allowing counsel to the NAC to decide a procedural motion in an eligibility proceeding or an expedited proceeding.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA's Code of Procedure (the ''Code'') contains detailed provisions for initiating and adjudicating various types of actions, including disciplinary, eligibility, expedited, and cease and desist proceedings.[3] Since implementation on August 7, 1997, FINRA staff has obtained significant experience using the Code, and believes that certain Code provisions should be amended to improve workability, provide more clarity and reduce unnecessary duplication. The proposed rule change, as described below, seeks generally to improve the efficient administration of FINRA proceedings, is procedural in nature, and will not affect any party's substantive rights under FINRA rules.

[3] The FINRA Rule 9000 Series is FINRA's Code of Procedure.

#### Service of Complaint

FINRA Rule 9131(a) requires a complaint to be served on each party by the Department of Enforcement or the Department of Market Regulation. Currently, the rule does not explicitly permit FINRA staff to serve the complaint on a party's counsel. Many parties, however, are represented by counsel when a complaint is ready to be served. FINRA proposes to accommodate respondents who have retained counsel and have authorized them to accept service. The proposed rule change amends FINRA Rule 9131(a) to clarify that only the Department of Enforcement or the Department of Market Regulation can serve a complaint and to allow for service on counsel or another person authorized to represent others when such representative agrees to accept service of the complaint. FINRA also seeks to address an issue created by the Rules of Professional Conduct in many states, which require that, once a person retains an attorney, unless the attorney specifically provides otherwise, all communications be directed to counsel.[4] The proposal harmonizes FINRA's rules with these state bar rules.

FINRA Rule 9131(a) also provides that a party initiating a proceeding shall serve a document initiating a proceeding on the other party. FINRA proposes to delete this provision because it has been superseded by other FINRA rules and no longer plays a role in expedited proceedings.[5] Further, the Code does not allow a party other than FINRA to initiate a proceeding.[6]

The FINRA Rule 9550 Series provides procedures for initiating and adjudicating expedited proceedings. The service provisions contained in the rules under the Rule 9550 Series are similar to FINRA Rule 9131(a) in that they require serving notice on a member, person associated with a member or person subject to FINRA's jurisdiction, but do not discuss service on counsel. For the reasons set forth above, FINRA is proposing to amend FINRA Rules 9551(b), 9552(b), 9553(b), 9554(b), 9555(b) and 9556(b) to allow for service on counsel or other person authorized to represent others when such representative agrees to accept service of a notice.

[4] *See, e.g.,* American Bar Association Model Rule of Professional Conduct 4.2 (Communication with Person Represented by Counsel) (ABA Rule 4.2). ABA Rule 4.2 provides that, ''[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.'' Many states have rules regarding communication with a person represented by counsel that are based on ABA Rule 4.2.

[5] The references to a document initiating a proceeding have been rendered unnecessary in FINRA Rule 9131 because each of FINRA's expedited proceedings has a specific rule that typically states that FINRA staff will serve the FINRA member or associated person with a notice regarding the expedited proceeding. *See* FINRA Rules 9551(b), 9552(b), 9553(b), 9554(b), 9555(b), 9556(b), 9557(b) and 9558(b).

[6] The concept of allowing an aggrieved person to initiate an NASD disciplinary proceeding was eliminated, with Commission approval, in 1997. *See Russell A. Simpson,* 53 S.E.C. 1042, 1044 n.3, 1998 SEC LEXIS 2503, at *3 n.3 (1998).

#### Filing of Papers With Adjudicator

FINRA Rule 9135(a) prescribes the timing for the filing of papers with an adjudicator. Complaints are deemed timely filed upon mailing or delivery to the Office of Hearing Officers. Other papers required to be filed are deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail or sent by courier to FINRA. In recognition of the increased use of electronic mail, FINRA is proposing to amend FINRA Rule 9135(a) to allow the use of electronic mail as another delivery method for complaints and other papers required to be filed with an adjudicator.

FINRA Rule 9136 establishes the form for papers filed in connection with a disciplinary proceeding or a review of a disciplinary proceeding. FINRA is proposing to amend FINRA Rule 9136(a)(5) to require such papers to contain single-spaced footnotes. Additionally, to reduce duplication, FINRA is proposing to amend FINRA Rule 9136(c) by decreasing the number of copies required to be filed with the adjudicator from three to one, unless otherwise ordered. Finally, the proposed rule change amends FINRA Rule 9313 by giving counsel to the NAC the authority to set the specifications and the number of copies of all papers to be filed with the NAC. The proposed rule change is consistent with counsel to the NAC's other ministerial and administrative responsibilities under the rule, and it furthers the efficient administration of review proceedings.

#### Motion To Withdraw by Attorney

FINRA Rule 9142 requires an attorney for a party or person authorized to represent others seeking to withdraw to give notice setting forth good cause for the withdrawal at least 30 days prior to withdrawal, unless circumstances do not permit. It has been FINRA staff's experience that, on occasion, an attorney believes that his or her withdrawal is effective immediately upon filing the notice, and the attorney does not provide any contact

information for the party no longer being represented. To address these concerns, and to lessen the potential disruption to parties and pending proceedings caused by the withdrawal of counsel, FINRA is proposing to amend FINRA Rule 9142 to require an attorney for a party (or person authorized to represent others by FINRA Rule 9141) seeking to withdraw to file a motion that sets forth the good cause for withdrawal and contains the contact information of the party no longer being represented.

Subjects Discussed at Pre-Hearing Conference

FINRA Rule 9241(c) delineates the subjects that the Hearing Officer, in a pre-hearing conference, may consider and act upon. The proposed rule change amends FINRA Rule 9241 by adding an additional, permissive subject for a pre-hearing conference: designation of relevant portions of transcripts from investigative testimony or other proceedings and the inclusion of an index for such testimony. It has been FINRA staff's experience that parties sometimes introduce voluminous testimonial transcripts into evidence, without specifying the particular sections of such transcripts that are relevant to the proceeding and without an index. The proposed rule change promotes efficiency by bringing into focus the relevant portions of testimonial transcripts.

Fees for Copying Costs During Discovery

FINRA Rule 9251(f) allows a respondent to obtain a photocopy of all documents made available for inspection by the Department of Enforcement or the Department of Market Regulation. Unless otherwise ordered, charges for copies made at the request of a respondent shall be at a rate to be established by the Board of FINRA or FINRA Regulation. The proposed rule change amends FINRA Rule 9251(f) to identify FINRA staff as setting the rate for copies. Copying costs are based on rates charged by local copying vendors in the area where FINRA maintains the documents. FINRA staff is familiar with these copying rates and will base the rates accordingly.

Submission of Evidence

FINRA Rule 9261(a) addresses pre-hearing disclosures and requires each party to submit to all other parties and to the Hearing Officer copies of documentary exhibits the parties intend to introduce and the names of the witnesses each party intends to present at a hearing. Currently, pre-hearing, proposed documentary evidence submitted to the Hearing Officer becomes part of the record. At the hearing, all of the documents that are admitted into evidence also become part of the record.[7] This results in the record containing a duplicate of nearly every document that was admitted into evidence. When a Hearing Panel decision is appealed to the NAC, FINRA staff makes several copies of the record. The unnecessary duplication of pre-hearing exhibits is therefore multiplied on appeal.

The proposed rule change amends FINRA Rule 9261(a) to establish that documentary evidence submitted prior to a hearing shall not become part of the record, unless a Hearing Officer, Hearing Panel, or Extended Hearing Panel orders that it will be. Further, the Hearing Officer may order each party—who will continue to exchange proposed documentary evidence with other parties—to refrain from submitting its proposed documentary evidence to the Hearing Officer. The proposed amendment reduces duplication of documents in the record and will prevent the copying of thousands of pages of pre-hearing exhibits each year.

Hearing Panel and NAC Decisions

FINRA Rules 9268(b)(1) and 9349(b)(1) require that a statement describing the investigative or other origin of the disciplinary proceeding be included in the contents of a decision of the Hearing Panel or the NAC, respectively. The proposed rule change amends this provision to require such statement only if it is not otherwise contained in the record. The proposed amendment reduces unnecessary statements from disciplinary decisions.

Review Proceedings

FINRA Rule 9312(a)(2) requires that if a default decision issued pursuant to FINRA Rule 9269 is called for review by the General Counsel within 25 days after the date of service of the decision, such decision shall be reviewed by the NAC. FINRA proposes to amend the rule to clarify that the Review Subcommittee also may review such decisions.[8] The scope of review of default decisions is generally limited to address omissions or apparent mistakes in default decisions. The proposed rule change—in appropriate cases—allows for a speedier, more efficient review process, as the Review Subcommittee will typically be able to review a default decision and issue a short remand order more expeditiously than the NAC.

Oral Argument in Review of Proceedings

FINRA Rule 9341(a) establishes the procedure for a party requesting an oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee.[9] Currently, once oral argument is requested, there is no mechanism to cancel such argument if a respondent abandons his or her request for oral argument subsequent to filing a brief but prior to the date set for oral argument. The proposed rule change allows the Subcommittee or, if applicable, the Extended Proceeding Committee, to cancel in writing a previously scheduled oral argument, and decide the matter based on the briefs and the record without oral argument, if the adjudicator finds good cause due to a respondent abandoning his or her prior request, or similar unreasonable lack of availability. For example, a respondent may be viewed as abandoning a previously scheduled oral argument if the adjudicator has not received a response after attempting to confirm the attendance of the respondent. If the adjudicator cancels an oral argument but a respondent believes this action was taken in error, a respondent may file a motion seeking to reschedule oral argument. The proposed rule change promotes efficiency and conserves resources that would have been expended in traveling to an oral argument when a respondent does not attend.

Failure to Participate in Disciplinary Proceeding

FINRA Rule 9344(a) gives the NAC or the Review Subcommittee discretion on how to proceed when an appealing party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel.[10] The proposed rule change eliminates the first sentence of the rule because that sentence merely introduces the concept that the NAC could either remand an appeal from a default decision or consider the appeal without

[7] *See* FINRA Rule 9267(a)(3).

[8] The Review Subcommittee is authorized to determine whether disciplinary decisions should be called for review by the NAC. *See* FINRA Regulation By-Laws, Article V, Section 5.13.

[9] Upon consideration of the volume and complexity of the certified record, the NAC or the Review Subcommittee may appoint an Extended Proceeding Committee. *See* FINRA Rule 9331(a)(2).

[10] Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other material factors, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and such matter shall be considered by an Extended Hearing Panel. *See* FINRA Rule 9231(c).

a remand.[11] The proposal specifies that the NAC or the Review Subcommittee will remand the disciplinary proceeding with instructions when a party shows good cause for failing to participate below. If, on the other hand, a party does not show good cause, the Subcommittee or other adjudicator will decide the case based on the briefs and the record and without oral argument. By amending this section, FINRA intends to make the rule easier to understand.

The proposed rule change substitutes the word ''shall'' for ''may'' when describing the NAC's action when a party shows good cause because the applicable remedy in this circumstance is always a remand with instructions. Default decisions against a respondent allow the Hearing Officer to deem the allegations in the complaint admitted, a practice that is widely followed in FINRA proceedings.[12] Consequently, when a party shows good cause, the NAC would find it impracticable to review the merits of the appeal because the NAC would have no record evidence to review regarding the substance of alleged violations. Given the state of the record, the NAC should order a remand with instructions when a respondent shows good cause for failing to participate below.

Filing of Papers in Eligibility Proceedings

FINRA Rule 9524(a)(5) gives a Hearing Panel in an eligibility proceeding the ability, after obtaining consent of all the parties, to extend or shorten any time limits prescribed by the Code for the filing of any papers. The proposed rule change removes the consent requirement for any extension of such time limits to empower Hearing Panels with authority over such scheduling matters. This change makes eligibility proceedings consistent with disciplinary proceedings.[13]

Procedural Motions in Eligibility or Expedited Proceedings

FINRA Rule 9146(j)(3) requires that in the FINRA Rule 9500 Series, a motion shall be decided by an adjudicator. FINRA proposes to amend the rule by allowing Counsel to the NAC to decide a procedural motion made pursuant to an eligibility proceeding or an expedited proceeding. This proposed rule change enables Counsel to the NAC to handle procedural motions in a more efficient and expeditious manner, and is similar to Counsel to the NAC's authority to dispose of procedural motions in disciplinary proceedings.[14] Counsel will not be authorized to rule on dispositive motions.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval. Once effective, the proposed rules will apply immediately to all new and pending matters governed by FINRA's Code of Procedure.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(8) of the Act,[15] which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members, and Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA's Code has been used in hundreds of disciplinary cases since its adoption and has provided fair procedures. It has allowed disciplinary cases to proceed in an orderly manner and thereby facilitated Hearing Panel and NAC decisions that, in turn, protect investors and the public interest. The proposed rule change will allow FINRA to continue to uphold the purposes of the Act by improving FINRA's case management of disciplinary cases, reducing costs, and promoting an effective disciplinary system.

First, FINRA believes that the proposed rule change promotes fair procedures by improving the ability of adjudicators and their advisors to manage efficiently cases at both the trial level and on appeal. Several proposed revisions give specific authority to Hearing Officers, the Review Subcommittee, and counsel to the NAC such as: (1) Adding an additional subject at a pre-hearing conference that brings into focus the relevant portions of testimonial transcripts; (2) clarifying that the Review Subcommittee may review certain default decisions rather than the NAC; (3) giving counsel to the NAC authority to set the specifications and the number of copies of all papers to be filed with the NAC; (4) allowing counsel to the NAC to decide a procedural motion made in an eligibility proceeding or an expedited proceeding; (5) allowing a Hearing Panel in an eligibility proceeding to extend time limits for the filing of any papers; and (6) allowing FINRA staff to determine copying costs. These improvements to and confirmations of case management authority will allow adjudicators and advisors to follow fair procedures by applying appropriate rules to a suitable case.

Second, the proposed rule change promotes fair procedures by reducing costs, conserving resources, and making participation in the disciplinary process somewhat easier. By decreasing the number of copies that the parties must file with the adjudicator, the proposed rule change to FINRA Rule 9136(e) will reduce costs to the parties. From the perspective of FINRA and its adjudicators, moreover, the proposed rule change to FINRA Rule 9261(a) will prevent the inclusion in the record of hundreds of duplicate exhibits that are otherwise contained in the record. Moreover, the proposed rule change to FINRA Rules 9268(b)(1) and 9349(b)(1) reduces duplication by requiring a statement describing the origin of a disciplinary proceeding be included only if it is not otherwise contained in the record. And by authorizing an adjudicator to cancel a previously scheduled oral argument that has been abandoned by a respondent, the proposed rule change to FINRA Rule 9341(a) prevents unnecessary travel by adjudicators and FINRA staff. These latter revisions will reduce FINRA's costs.

Another aspect of the proposed rule change promotes fair procedures by allowing the parties to comply with the Code more easily. Parties will be allowed to, but not required to, file papers with an adjudicator by email. Respondents also will have the option of authorizing their attorney or representative to accept service of a complaint and notices of certain expedited proceedings. Additionally, the proposed rule change promotes clarity by stating more directly the process for a party who seeks to appeal from a default decision.

The proposed rule change also reserves an adjudicator's ability to customize an order to promote fairness, based on the facts of that case. For example, a Hearing Officer may order that a particular pre-hearing submission

[11] The proposed rule change also removes the potentially confusing language that the NAC would dismiss an appeal and remand the matter. In practice, when the NAC has remanded a default decision to a Hearing Officer, for example, the NAC remand order does not also state that the appeal is dismissed.

[12] *See* FINRA Rule 9269(a)(1).

[13] *See* FINRA Rule 9322(a).

[14] *See* FINRA Rule 9146(j)(2).

[15] 15 U.S.C. 78*o*–3(b)(8).

[16] 15 U.S.C. 78*o*–3(b)(6).

be included in the record pursuant to FINRA Rule 9261(a), which could be based on fairness concerns.

Third, the proposed rule change protects the public interest by requiring an attorney seeking to withdraw from a disciplinary case to file a motion (which will provide contact information for the party previously represented) before withdrawal would be approved. The proposed revision seeks to reduce any uncertainly as to whether a respondent is represented by an attorney. By requiring an attorney to file a motion for withdrawal, adjudicators and the parties will know that an attorney continues to represent the respondent until the motion is granted. This proposed revision promotes an effective disciplinary system in which cases can proceed to a hearing. By furthering an effective disciplinary system, the proposed rule change is consistent with the public interest in imposing disciplinary sanctions on FINRA firms and associated persons who violate FINRA Rules or the federal securities laws.

For each of these reasons, FINRA believes that the proposed rule change will improve the process and procedures that govern the adjudication of disciplinary cases and expedited proceedings.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or 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 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 self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–044 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2011–044 and should be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30255 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65779; File No. SR–Phlx–2011–152]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Perform a Test of Routing Functionality

November 17, 2011.

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 November 10, 2011, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''PHLX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

PHLX is filing this proposed rule change to allow a limited use of its broker-dealer affiliate, Nasdaq Execution Services LLC (''NES''), to perform a test of routing functionality to be introduced by NASDAQ OMX PSX (''PSX''). PHLX proposes to implement the rule change prior to November 14, 2011. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx*, at PHLX'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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As provided in Rule 3315, PSX recently adopted rules that will allow it to route orders to other trading venues for execution.[3] Routing will be performed by NES, a registered broker-dealer that is an affiliate of the Exchange. In order to ensure that the routing functionality is operating properly prior to making it available to members, the Exchange proposes to use NES to perform test trades in an actual security, so as to track the performance of the systems to be used by the Exchange from order entry to clearance and settlement.

The test will be performed through two buy orders for 100 shares in a highly liquid security, such as the Power Shares QQQ Trust. Upon the execution of each buy order, NES will enter an offsetting sell order in the same security for the same quantity, in order to close out the test position and minimize financial impact on the Exchange. For the buy orders, NES will submit a routable marketable limit order with a time-in-force of Immediate or Cancel to the Exchange, with instructions to route to a directed away market. The Exchange will then deliver the order to NES, as the routing broker, which will route to the designated away market and receive an execution back. The first offsetting sell order will be handled in a similar manner. The second offsetting sell order will be executed at the Exchange itself, to ensure that the Exchange's systems are correctly distinguishing between routed and non-routed trades. To the extent that the offsetting trades require the Exchange to pay out funds, the funds will be provided out of the cash accounts of the Exchange; to the extent that the trades result in a profit, the funds will be deposited in the cash accounts of the Exchange.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, PHLX believes that the change will allow it to perform adequate testing of its systems for routing member orders before such systems become operational. The Exchange believes that adequate testing of market functionality is an important component of the operation of the national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*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**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to conduct a limited test to assess the performance of its routing functionality and related systems prior to implementation and use by its members. The Exchange believes that a limited test prior to the launch of its routing functionality will assist the Exchange in uncovering and fixing any potential ''bugs'' so as to increase the likelihood of a successful implementation. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to conduct a limited test without undue delay to ensure that its routing functionality and related systems are operating properly prior to implementation. Therefore, the Commission designates the proposal operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments:*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–152 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–152. 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/*

[3] Securities Exchange Act Release No. 65469 (October 3, 2011), 76 FR 62486 (October 7, 2011) (SR–Phlx–2011–108).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

*rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing 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–Phlx–2011–152 and should be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30178 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65781; File No. SR–CBOE–2011–101]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify That CBSX Will Process Only Round-Lot Orders of HOLDRS

November 17, 2011.

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 November 15, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 52.8 to clarify that CBOE Stock Exchange (''CBSX''), CBOE's stock trading facility, will only process round-lot orders[3] of HOLDRS Trust Issued Receipts (''HOLDRS'') that trade on CBSX. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Rule 52.8 states that odd-lot orders (including the odd-lot potion of a mixed-lot order) are processed in the same manner as are round-lot orders, except (i) If an incoming odd-lot order trades against a quote in the CBSX Book, the new quantity remaining in the quote will be rounded down to the nearest lower round-lot amount (zero or multiple of 100) for display purposes, with the remaining odd-lot amount being cancelled, or (ii) if an incoming order trades against a limit order resting on the CBSX Book and an odd-lot amount remains from the limit order resting on the CBSX Book, that odd-lot amount will remain in the system eligible for execution but will not be displayed.

[3] A ''round-lot'' order is an order for a quantity that is a multiple of 100 (e.g. 100, 400, 1200). An ''odd-lot'' order is an order for a quantity that is less than 100. A ''mixed-lot'' order is an order for a quantity that is greater than 100 but not a multiple of 100 (*e.g.* 135, 372, 1126).

HOLDRS are Trust Issued Receipts that trade on CBSX and represent an investor's beneficial ownership of a specified group of stocks in various industries, sectors or groups.[4] Currently, CBSX processes odd-lot and mixed-lot orders of HOLDRS in accordance with Rule 52.8, as described above. However, the prospectuses describing the terms of HOLDRS provide that investors may only acquire, hold, transfer, and surrender a round-lot of HOLDRS.[5] The purpose of the proposed rule change is to amend Rule 52.8 to state that CBSX will only process round-lot orders of HOLDRS that trade on CBSX in accordance with the trading terms of HOLDRS. CBSX will no longer accept odd-lot or mixed-lot orders of HOLDRS it receives.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and in general to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change serves to foster investor protection by ensuring that investors not only are aware of this restriction on transactions in HOLDRS but also comply with this restriction going forward, as CBSX will no longer accept transactions that do not.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or 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*

No written comments were solicited or received with respect to the proposed rule change.

[4] The following is a list of current outstanding HOLDRS: Biotech (BBH), Broadband (BDH), B2B Internet (BHH), Europe 2001 (EKH), Internet (HHH), Internet Architecture (IAH), Internet Infrastructure (IIH), Market 2000+ (MKH), Oil Services (OIH), Pharmaceutical (PPH), Regional Bank (RKH), Retail (RTH), Semiconductor (SMH), Software (SWH), Telecom (TTH), Utilities (UTH), and Wireless (WMH).

[5] The prospectuses also provide, however, that bid and ask prices are quoted per single HOLDR.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

### 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 [8] and Rule 19b–4(f)(6) thereunder [9] because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that such action is consistent with the protection of investors and the public interest, because it will enable the Exchange immediately to align its trading rules with respect to HOLDRS with provisions of the HOLDRS prospectuses. Therefore, the Commission designates the proposed rule change to be operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

### 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–2011–101 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing 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–2011–101 and should be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30180 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65769; File No. SR–BX–2011–074]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Simplify the $1 Strike Price Interval Program

November 17, 2011.

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 November 7, 2011, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to simplify the $1 Strike Price Interval Program (''Program'').

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

This filing is based on a rule change submitted by the Chicago Board Options Exchange, Inc. (''CBOE'') previously approved by the Commission, and a rule change by the International Securities Exchange, LLC. (''ISE'') effective and operative upon its filing.[4]

In 2004, the Commission issued an order permitting the establishment of the Program on BOX on a pilot basis.[5] At that time, the underlying stock had to close at $20 on the previous trading day in order to qualify for the Program. The range of available $1 strike price intervals was limited to a range between $3 and $20 and no strike price was permitted that was greater than $5 from the underlying stock's closing price on the previous trading day. Series in $1 strike price intervals were not permitted within $0.50 an existing strike. In addition, BOX was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore, LEAPS in $1 strike price intervals were not permitted for classes selected to participate in the Program.

The pilot program has been renewed on BOX on a yearly basis and in 2008, the Commission granted permanent approval of the Program.[6] At that time, the Program was expanded to increase the upper limit of the permissible strike price range from $20 to $50. In addition, the number of class selections per exchange was increased from five (5) to ten (10). Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes[7] and subsequently increased from 55 classes to 150 classes.[8]

Amendments To Simplify Non-LEAPS Rule Text

The most recent expansion of the Program was approved by the Commission in early 2011 and increased the number of $1 strike price intervals permitted within the $1 to $50 range.[9] This expansion was a proposal of another exchange and the Exchange submitted its filing for competitive reasons. This expansion, however, has resulted in very lengthy rule text that is complicated and difficult to understand. BOX believes that the proposed changes to simplify the rule text of the Program will benefit market participants since the Program will be easier to understand and will maintain the expansions made to the Program in early 2011. Through the current proposal, the Exchange also hopes to make administration of the Program easier, *e.g.,* system programming efforts. To simply the rules of the Program and, as a proactive attempt to mitigate any unintentional listing of improper strikes, the Exchange is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than $20, permit $1 strike price intervals with an exercise price up to 100% above and 100% below the price of the underlying stock.
  - However, the above restriction would not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class.
  - For example, if the price of the underlying stock is $2, BOX would be permitted to list the following series: $1, $2, $3, $4, $5, $6 and $7.
- When the price of the underlying stock is greater than $20, permit $1 strike price intervals with an exercise price up to 50% above and 50% below the price of the underlying security up to $50.
- For the purpose of adding strikes under the Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' is as set forth in Chapter IV, Section 6(b)(i) of the BOX Rules.
- Prohibit the listing of additional series in $1 strike price intervals if the underlying stock closes at or above $50 in its primary market and provide that additional series in $1 strike price intervals may not be added until the underlying stock closes again below $50.

Amendments To Simplify LEAPS Rule Text

The early 2011 expansion of the Program permitted for some limited listing of LEAPS in $1 strike price intervals for classes that participate in the Program. The Exchange is proposing to maintain the expansion as to LEAPS, but simplify the language and provide examples of the simplified rule text. These changes are set forth subparagraph (v) to Supplementary Material .02(b).

For stocks in the Program, BOX may list one $1 strike price interval between each standard $5 strike interval, with the $1 strike price interval being $2 above the standard strike for each interval above the price of the underlying stock, and $2 below the standard strike for each interval below the price of the underlying stock (''$2 wings''). For example, if the price of the underlying stock is $24.50, BOX may list the following standard strikes in $5 intervals: $15, $20, $25, $30 and $35. Between these standard $5 strikes, BOX may list the following $2 wings: $18, $27 and $32.

In addition, BOX may list the $1 strike price interval which is $2 above the standard strike just below the underlying price at the time of listing. In the above example, since the standard strike just below the underlying price ($24.50) is $20, BOX may list a $22 strike. BOX may add additional long-term options series strikes as the price of the underlying stock moves, consistent with the OLPP.

Non-Substantive Amendments to Rule Text

The early 2011 expansion of the Program prohibited the listing of $2.50 strike price intervals for classes that participate in the Program. This prohibition applies to non-LEAP and LEAPS. The Exchange proposes to maintain this prohibition and codify it in Supplementary Material .02(a) (Program Description).

For ease of reference, the Exchange is proposing to add the headings ''$1 Strike Price Interval Program,'' ''Program Description,'' ''Initial and Additional Series'' and ''LEAPS'' to Supplementary Material .02.

The Exchange is proposing to more accurately reflect the nature of the Program and is proposing to make stylistic changes throughout Supplementary Material .02 by adding the phrase ''price interval.'' Lastly, the Exchange is making technical changes to Supplementary Material .02, e.g., replacing the words ''security'' and ''issue'' with the word ''stock.''

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that will result from the proposed streamlining changes to the Program.

[4] *See* Securities Exchange Act Release Nos. 65383 (September 22, 2011) 76 FR 60107 (September 28, 2011) (Order Approving SR–CBOE–2011–040) and 65384 (September 22, 2011) 76 FR 60574 (September 29, 2011) (SR–ISE–2011–059).

[5] *See* Securities Exchange Act Release No. 49292 (February 20, 2004) 69 FR 8993 (February 26, 2004) (SR–BSE–2004–01).

[6] *See* Securities Exchange Act Release No. 57302 (February 11, 2008) 73 FR 8913 (February 15, 2008) (SR–BSE–2008–08).

[7] *See* Securities Exchange Act Release No. 59589 (March 17, 2009) 74 FR 12408 (March 24, 2009) (SR–BX–2009–016).

[8] *See* Securities Exchange Act Release No. 62553 (July 22, 2010) 75 FR 44826 (July 29, 2010) (SR–BX–2010–50).

[9] *See* Securities Exchange Act Release No. 63774 (January 25, 2011) 76 FR 5628 (February 1, 2011) (SR–BX–2011–06).

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 and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the $1 Strike Price Interval Program.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b-4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The proposed rule change is substantially similar to $1 Strike Price Program rules in place at other exchanges, so the Commission's action will allow the Exchange to implement these changes without undue delay. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–074 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–074. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2011–074 and should be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30192 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65771; File No. SR–ISE–2011–60]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule to Expand the Short Term Options Series Program

November 17, 2011.

**I. Introduction**

On September 23, 2011, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the Short Term Options Series Program (''STOS Program''). The proposed rule change was published for comment in the **Federal Register** on October 13, 2011.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

The proposed rule change seeks to amend ISE Rules 504 and 2009 to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65503 (October 6, 2011), 76 FR 63691 (''Notice'').

expand the STOS Program[4] so that the Exchange may select up to 25 option classes to participate in the STOS Program[5] and list up to 30 Short Term Option Series (''STOS Options'') for each option class that participates in the Exchange's STOS Program.[6] Currently, the Exchange may open no more than 15 option classes and no more than 20 series for each expiration date in those classes.[7] The Exchange proposed no other changes to the STOS Program.

In the Notice, the Exchange stated that the principal reason for the proposed expansion is customer demand for adding, or not removing, classes from the STOS Program. Specifically, ISE cited an increased demand for more series when market-moving events, such as corporate events and large price swings, have occurred during the life span of an affected STOS class. Currently, if the maximum number of series has been reached, the Exchange must delete or delist certain series in order to make room for more in-demand series.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of products and the need to avoid unnecessary proliferation of options series.

In approving this proposal, the Commission notes that the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes and series in the STOS Program. The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–ISE–2011–60) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30195 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[4] The Exchange adopted the STOS Program on a pilot basis in 2005. *See* Securities Exchange Act Release No. 52012 (July 12, 2005), 70 FR 41246 (July 18, 2005) (SR–ISE–2005–17). The STOS Program was approved on a permanent basis in 2010. *See* Securities Exchange Act Release No. 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72).

[5] The Exchange previously increased the total number of option classes that may participate in the STOS Program from five to 15. *See* Securities Exchange Act Release No. 63878 (February 9, 2011), 76 FR 8796 (February 15, 2011) (SR–ISE–2011–08).

[6] The Exchange previously increased the number of permissible series per STOS class from seven to 20 series. *See* Securities Exchange Act Release No. 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72).

[7] However, if the Exchange opens less than 20 series for an expiration date, additional series may be opened with that expiration date when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional series listed by the Exchange shall have strike prices within 30% above or below the current price of the underlying security. The Exchange may also open additional series of Short Term Option Series with strike prices more than 30% above or below the current price of the underlying security if demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision. *See* Supplementary Material .02(d) to Rule 504 and Supplementary Material .01(d) to Rule 2009.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65775; File No. SR–NASDAQ–2011–138]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Expanding the Short Term Option Series Program

November 17, 2011.

## I. Introduction

On September 28, 2011, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the Short Term Option Program (''Program'') to allow the NASDAQ Options Market (''NOM'' or ''Exchange'') to: (1) Select up to 30 option classes on which Short Term Option Series (''STO Series'') may be listed; and (2) allow the Exchange to open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules. The proposed rule change was published for comment in the **Federal Register** on October 17, 2011.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

NASDAQ proposed to amend Chapter IV, Section 6 and Chapter XIV, Section 11 of the Short Term Option Series Program (''STO Program'' or ''Program'') to: (1) Increase from 15 to 30 the number of option classes on which STO Series may be opened; and (2) allow the Exchange to open STO Series that are opened by other securities exchanges (the ''STO Exchanges'') in option classes selected by such exchanges under their respective short term option rules.

In the Notice, the Exchange stated that the principal reason for the proposed expansion is market demand for additional STO classes and series. NASDAQ stated that the Exchange has had to turn away STO customers because it could not list, or had to delist, STO Series or could not open adequate STO Series because of restrictions in the STO Program.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65528 (October 11, 2011), 76 FR 64142 (''Notice'').

The Exchange also stated that it has analyzed its capacity, and represented that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series.

In approving this proposal, the Commission notes that the Exchange has represented that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program. The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASDAQ–2011–138) be, and it hereby is, approved.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30199 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65778; File No. SR–NYSEArca-2011–80]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Rockledge SectorSAM ETF Under NYSE Arca Equities Rule 8.600

November 17, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Rockledge SectorSAM ™ ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[3] (''Shares'') under NYSE Arca Equities Rule 8.600: Rockledge SectorSAM ETF (''Fund'').[4] The Shares will be offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment adviser to the Fund is AdvisorShares Investments, LLC (''Adviser''). Rockledge Advisers LLC serves as investment sub-adviser to the Fund (''Rockledge'' or ''Sub-Adviser'') and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC (''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation (''Administrator'')

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (order approving listing of AdviserShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing of Cambria Global Tactical ETF); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR–NYSEArca–2010–86) (order approving listing of Peritus High Yield ETF).

[5] The Trust is registered under the 1940 Act. On April 11, 2011, the Trust filed with the Commission Post-Effective Amendment No. 23 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

serves as administrator, custodian and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[6] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer. In the event (a) The Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

According to the Registration Statement, the Fund is considered a ''fund-of-funds'' that seeks to achieve its investment objective by primarily investing in other U.S.-listed exchange-traded funds (''Underlying ETFs'') that offer diversified exposure to U.S. large capitalization (generally, Standard & Poor 500 companies) sectors. The Sub-Adviser will use ''Sector Scoring and Allocation Methodology'' (''SectorSAM''), which is a proprietary quantitative analysis, to forecast each sector's excess return within a specific time horizon. The Sub-Adviser will seek to achieve the Fund's investment objective by buying (taking long positions in) Underlying ETFs intended to capture the performance of the most promising sectors and selling (establishing short positions) in Underlying ETFs with the intent of profiting from the least promising sectors of U.S. large capitalization broad market securities. The strategy is designed to generate higher returns in a higher interest rate environment, which is often associated with increased inflation.[7]

Under normal circumstances,[8] the Fund intends to invest equal dollar amounts to obtain both long and short exposure in the market at each major rebalancing point (on at least a monthly basis). When fully invested, the Fund will typically be both 100% long and 100% short of total portfolio value. The Sub-Adviser, in its discretion, may choose an additional long or short bias of up to 50% exposure, or may choose to hold amounts in cash or cash equivalents depending on its view of market conditions.

The Underlying ETFs in which the Fund will invest will primarily be ETFs that hold substantially all of their assets in securities representing a specific index. The main risk of investing in index-based investments is the same as investing in a portfolio of securities comprising the index. The market prices of index-based investments will fluctuate in accordance with both changes in the market value of their underlying portfolio securities and due to supply and demand for the instruments on the exchanges on which they are traded (which may result in their trading at a discount or premium to their net asset values (''NAVs'').

The Fund, through its investment in Underlying ETFs, may invest in equity securities. Equity securities represent ownership interests in a company or partnership and consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.

The Fund, through its investment in Underlying ETFs, may invest in American Depositary Receipts (''ADRs''), as well as Global Depositary Receipts (''GDRs,'' together with ADRs, ''Depositary Receipts''), which are certificates evidencing ownership of shares of a foreign issuer. Depositary Receipts may be sponsored or unsponsored. These certificates are issued by depositary banks and generally trade on an established market in the United States or elsewhere. The underlying shares are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. ADRs are alternatives to directly purchasing the underlying foreign securities in their national markets and currencies. However, ADRs continue to be subject to many of the risks associated with investing directly in foreign securities.

Investments in Foreign Equity Securities. Through Underlying ETFs, the Fund may invest in the equity securities of foreign issuers, including the securities of foreign issuers in emerging market countries. Emerging or developing markets exist in countries that are considered to be in the initial stages of industrialization. The risks of investing in these markets are similar to the risks of international investing in general, although the risks are greater in emerging and developing markets. Countries with emerging or developing securities markets tend to have economic structures that are less stable than countries with developed securities markets. This is because their economies may be based on only a few industries and their securities markets may trade a small number of securities. Prices on these exchanges tend to be volatile, and securities in these countries historically have offered greater potential for gain (as well as

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) Above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The Underlying ETFs are registered under the 1940 Act and will be listed and traded in the U.S. on registered exchanges.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

loss) than securities of companies located in developed countries.

The Fund, through its investment in Underlying ETFs, may invest in closed-end funds, pooled investment vehicles that are registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges.

The Fund, through its investment in Underlying ETFs, may invest in shares of real estate investment trusts (''REITs''). REITs are pooled investment vehicles which invest primarily in real estate or real estate related loans. REITs are generally classified as equity REITs, mortgage REITs or a combination of equity and mortgage REITs.

The Fund intends to invest primarily in the securities of Underlying ETFs consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof.

The Underlying ETFs may invest in complex securities such as equity options, index options, repurchase agreements, foreign currency contracts and swaps.The Fund does not intend to invest in leveraged, inverse or inverse leveraged Underlying ETFs.

Investment Process

The following describes the Sub-Adviser's investment process, as described in the Registration Statement:

Quantitative Analysis. Rockledge has developed a proprietary SectorSAM™ quantitative research and evaluation process that forecasts economic excess sector returns (over/under the Standard & Poor's 500 Index (''S&P 500 Index'') for a given timeframe). Absolute returns may be captured by investing long in sectors which are forecasted to outperform the overall U.S. equity market and shorting sectors that are forecasted to underperform the market.

SectorSAM analysis provides for individual sector forecasts through analysis of over 200 fundamental, macroeconomic and technical factors influencing stock returns. The SectorSAM process creates a basket of factors that are meaningful to each economic sector within the S&P 500 Index. Rockledge reviews the information to make portfolio decisions on behalf of the Fund.

Long/Short Portfolio Construction. The Fund's portfolio will be comprised primarily of an equal dollar amount of long and short positions based on the Rockledge relative value strategy.[9] Rockledge will actively manage and adjust the positions in its long and short portfolios as dictated by its proprietary SectorSAM quantitative research and evaluation process.

Risk Management. The Fund's core long/short portfolio construction generally will be dollar neutral, where the value of all long positions is equal to the value of all short positions. According to the Registration Statement, this provides a high degree of inherent risk control, especially when stock markets are falling. The short positions provide protection against market declines, and may offer the potential to generate positive returns when markets are falling if the short positions fall more than the long positions. Rockledge will use a number of methods to monitor and manage the inherent risk of the portfolio including the tracking of relative sector exposure, volatility, and sector correlations. Rockledge proactively will monitor its positions, exposure and performance attribution on a real-time basis to identify, monitor and mitigate the most threatening risks to the Fund's ability to attain its investment objective.

The Fund's portfolio holdings will be disclosed on the Trust's Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

Other Investments of the Fund

To respond to adverse market, economic, political or other conditions,[10] the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through Underlying ETFs. The Fund may be invested in these instruments for extended periods, depending on the Sub-Adviser's assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities,[11] repurchase agreements [12] and bonds that are BBB or higher.

The Fund, or the Underlying ETFs in which it invests, may invest in U.S. Treasury zero-coupon bonds. These securities are U.S. Treasury bonds

[9] According to the Registration Statement, the following convictions constitute the guiding philosophy for the relative investment strategy pursued by the Sub-Adviser:

1. The U.S. economy goes through various growth and contraction stages and the various economic sectors reflect these changes.

2. Large capitalization stocks are heavily researched and well known to equity analysts. The valuations and pricing of these stocks are very close to efficient. It is difficult to make significant outsized returns by investing in individual large capitalization stocks.

3. The valuation of each U.S. economic sector is directly based on the aggregation of valuation of the individual companies making up that sector. Up to 90% of an individual stock's performance can be attributed to the return of the sector that stock is in.

4. Sector investing provides a better risk/return profile than individual stock investing. Sector investing eliminates company specific risk as sectors are inherently diversified.

5. Appropriately and correctly forecasted, one can capture both the upside potential of the outperforming sectors and downside loss of the underperforming sectors, relative to a broad market index.

6. There can be significant performance dispersion among various economic sectors. The ability to identify which sectors will outperform the broad market and which will underperform over a specified time period can lead to considerable cumulative absolute returns.

[10] Adverse market conditions would include large downturns in the broad market value of two or more times current average volatility, where the Sub-Adviser views such downturns as likely to continue for an extended period of time. Adverse economic conditions would include significant negative results in factors deemed critical at the time by the Sub-Adviser, including significant negative results regarding unemployment, Gross Domestic Product, consumer spending or housing numbers. Adverse political conditions would include events such as government overthrows or instability, where the Sub-Adviser expects that such events may potentially create a negative market or economic condition for an extended period of time.

[11] Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance. U.S. Treasury bills have initial maturities of one year or less; U.S. Treasury notes have initial maturities of one to ten years; and U.S. Treasury bonds generally have initial maturities of greater than ten years. Certain U.S. government securities are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as Fannie Mae, Freddie Mac, the Government National Mortgage Association (''Ginnie Mae''), the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the Commodity Credit Corporation, the Federal Financing Bank, the Student Loan Marketing Association, the National Credit Union Administration and the Federal Agricultural Mortgage Corporation (''Farmer Mac'').

[12] The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. The Fund may enter into reverse repurchase agreements as part of the Fund's investment strategy. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

which have been stripped of their unmatured interest coupons, the coupons themselves, and receipts or certificates representing interests in such stripped debt obligations and coupons.

The Fund may invest in exchange-traded notes (''ETNs''). As described in the Registration Statement, ETNs are debt obligations of investment banks which are traded on exchanges and the returns of which are linked to the performance of market indexes. In addition to trading ETNs on exchanges, investors may redeem ETNs directly with the issuer on a weekly basis, typically in a minimum amount of 50,000 units, or hold the ETNs until maturity. ETNs may be riskier than ordinary debt securities and may have no principal protection.

The Fund may not (i) With respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective Depositary Receipt.[13]

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective Depositary Receipt.[14]

The Fund will not purchase illiquid securities, including Rule 144A securities and loan participation interests.[15]

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company (''RIC'') under the Internal Revenue Code.[16]

Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues.

Pursuant to the terms of the Exemptive Order, the Fund will not invest in options contracts, futures contracts or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Net Asset Value

The Fund will calculate NAV by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders.

The Fund will calculate NAV once each business day as of the regularly scheduled close of the Core Trading Session on the Exchange (normally, 4 p.m., Eastern Time).

In calculating NAV, the Fund generally will value investment portfolios at market price. If market prices are unavailable or the Adviser believes they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Fund's Board of Trustees.

The use of fair valuation in pricing a security involves the consideration of a number of subjective factors and therefore, is susceptible to the unavoidable risk that the valuation may be higher or lower than the price at which the security might actually trade if a reliable market price were readily available.

Creation and Redemption of Shares

The Fund will offer and issue Shares on a continuous basis at NAV only in aggregated lots of 50,000 or more Shares (each a ''Creation Unit'' or a ''Creation Unit Aggregation''), generally in exchange for: (i) A basket of equity securities (''Deposit Securities''); and (ii) an amount of cash (''Cash Component''). Shares are redeemable only in Creation Unit Aggregations, and, generally, in exchange for portfolio securities and a specified cash payment.

A ''creator'' will enter into an authorized participant agreement (''Participant Agreement'') with the Distributor or use a Depository Trust Company (''DTC'') participant who has executed a Participant Agreement (''Authorized Participant''), and deposit into the Fund a portfolio of securities closely approximating the holdings of the Fund and a specified amount of cash, together totaling the NAV of the Creation Unit(s), in exchange for 50,000 Shares of the Fund (or multiples thereof).

All orders to purchase Creation Units must be received by the Distributor no later than the close of the regular trading session on the NYSE (ordinarily 4 p.m., Eastern Time) on the date such order is placed in order for the purchase of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. With respect to the Fund, the Administrator, through the National Securities Clearing Corporation (''NSCC''), will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the portfolio of securities (''Fund Securities'') that will be applicable to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units. Unless cash redemptions are available or specified for the Fund, the redemption proceeds

[13] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[14] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[15] A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[16] 26 U.S.C. 851. One of several requirements for RIC qualification is that the Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership (''90% Test''). A second requirement for qualification as a RIC is that the Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership (''Asset Test'').

for a Creation Unit generally will consist of Fund Securities plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities less a redemption transaction fee, as described in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[17] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*http://www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) Daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[18] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[19]

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line and, for the Underlying ETFs, will be available from the national securities exchange on which they are listed. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[20]

The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day. The intra-day, closing and settlement prices of the portfolio securities are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[21] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all

[17] 17 CFR 240.10A–3.

[18] The Bid/Ask Price of the Fund will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[19] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[20] Currently, it is the Exchange's understanding that several major market data vendors widely disseminate Portfolio Indicative Values taken from CTA or other data feeds.

[21] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[22] In addition, the Exchange could obtain information from the U.S. exchanges, all of which are ISG members, on which the Underlying ETFs are listed and traded.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m., Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[23] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The holdings of the Fund will be comprised primarily of U.S.-exchange listed Underlying ETFs. The listing and trading of such Underlying ETFs is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues. The Fund will not purchase illiquid securities, including Rule 144A securities and loan participation interests. The Fund does not intend to invest in leveraged, inverse or inverse leveraged Underlying ETFs. The Fund will not invest in options contracts, futures contracts or swap agreements.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. In addition, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

[22] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[23] 15 U.S.C. 78f(b)(5).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission 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–NYSEArca–2011–80 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE. Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–80. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE. Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2011–80 and should be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30202 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[24] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65777; File No. SR–Phlx-2011–151]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Professional Routing Fee to the BATS Exchange, Inc.

November 17, 2011.

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 November 8, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 Professional Routing Fee governing pricing for Exchange members using the Phlx XL II system,[3] for routing standardized equity and index option Professional orders to the BATS Exchange, Inc. (''BATS'') for execution.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov/,* and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing Professional orders in equity and index options to BATS. The Exchange's Fee Schedule includes Routing Fees for routing and executing Customer and Professional orders to away markets. The Exchange currently assesses a Professional Routing Fee of $0.36 per contract for option orders that are routed to BATS.[4] BATS recently adopted a definition for a professional and amended its Fee Schedule to assess a fee of $.42 for professionals that remove liquidity from BATS Options.[5] The Exchange is proposing to amend its Professional Routing Fee to BATS to recoup this fee.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (''NOS''), a member of the Exchange, as the Exchange's exclusive order router.[6] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange is proposing this amendment in order to recoup clearing and transaction charges incurred by the Exchange when Professional orders are routed to BATS.[7] The Exchange proposes to recoup the $.42 per contract professional taker fee for option orders that are routed to BATS along with the $0.06 clearing fee which is incurred by the Exchange, as explained herein.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that this fee is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing Professional orders to BATS on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the proposed Routing Fee would enable the Exchange to recover the professional taker fee assessed by BATS, plus clearing fees for the execution of Professional orders. The Exchange also believes that the proposed Routing Fee is equitable and not unfairly discriminatory because it would be uniformly applied to all Professionals.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–151 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE. Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–151. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–151 and should be submitted on or before December 14, 2011.

[4] The Exchange currently assesses a Customer Routing Fee of $0.36 per contract for option orders that are routed to BATS. This fee will remain the same.

[5] *See* Securities Exchange Act Release No. 65694 (November 4, 2011) (SR–BATS–2011–046).

[6] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[7] The Exchange is proposing to recoup the $.42 per contract professional transaction fee for orders routed to BATS along with the $0.06 clearing fee which is incurred by the Exchange, as explained above. *See* BATS Fees Schedule.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30201 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65776; File No. SR–Phlx–2011–131]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Expanding the Short Term Option Series Program

November 17, 2011.

### I. Introduction

On September 28, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the Short Term Option Program (''Program'') to allow the Exchange to: (1) Select up to 30 option classes on which Short Term Option Series (''STO Series'') may be listed; and (2) open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules. The proposed rule change was published for comment in the **Federal Register** on October 17, 2011.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

The Exchange proposed to amend Rule 1012 (Series of Options Open for Trading) and Rule 1101A (Terms of Option Contracts) to expand the Short Term Option Series Program (''STO Program'' or ''Program'') to: (1) Increase from 15 to 30 the number of option classes on which STO Series may be opened; and (2) allow the Exchange to open STO Series that are opened by other securities exchanges (the ''STO Exchanges'') in option classes selected by such exchanges under their respective short term option rules.

In the Notice, the Exchange stated that the principal reason for the proposed expansion is market demand for additional STO classes and series. The Exchange stated that it has had to turn away STO customers because it could not list, or had to delist, STO Series or could not open adequate STO Series because of restrictions in the STO Program.

The Exchange also stated that it has analyzed its capacity, and represented that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series.

In approving this proposal, the Commission notes that Exchange has represented that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes in the Program. The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

### IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–Phlx–2011–131) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30200 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 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. 65529 (October 11, 2011), 76 FR 64144 (''Notice'').

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65772; File No. SR–CBOE–2011–086]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule To Increase the Number of Series Permitted Per Class in the Short Term Option Series Program

November 17, 2011.

### I. Introduction

On September 19, 2011, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the number of series permitted per class in the Short Term Options Series Program. The proposed rule change was published for comment in the **Federal Register** on October 6, 2011.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

The proposed rule change seeks to amend CBOE Rules 5.5 and 24.9 to increase the number of Short Term Options Series (''Weekly options'') that may be opened for each option class that participates in the Exchange's Short Term Option Series Program (''Weeklys Program'').[4] Currently, Exchange rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65445 (September 30, 2011), 76 FR 62102 (''Notice'').

[4] In 2005, the Commission approved the Weeklys Program on a pilot basis. *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63). In 2009, the Commission approved the Weeklys Program on a permanent basis. *See* Securities Exchange Act

allow a total of 20 series to be opened for trading in each class that participates in the Weeklys Program. The proposed rule would increase this to a total of 30 series per class that may be opened for trading.[5]

In the Notice, the Exchange stated that the principal reason for the proposed expansion is market demand for additional series in Weekly option classes in which the maximum number of series (20) has already been reached. Specifically, CBOE cited an increased demand for more series when market-moving events, such as corporate events and large price swings, have occurred during the life span of an affected Weekly option class. Currently, if the maximum number of series has been reached, the Exchange must delete or delist certain series in order to make room for more in-demand series. The Exchange deletes series with no open interest and delists series with open interest if those series are open for trading on another exchange.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of products and the need to avoid unnecessary proliferation of options series.

In approving this proposal, the Commission notes that the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of series for classes that participate in the Weeklys Program. The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2011–086) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30196 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018).

[5] The Exchange previously increased the total number of series per Weeklys option class from seven to 20 series. *See* Securities Exchange Act Release No. 58870 (October 28, 2008), 73 FR 65430 (November 3, 2008) (SR–CBOE–2008–110). The existing rules provide that series must be added pursuant to CBOE Rules 5.5 and 24.9. Initial series shall be within 30% above or below the closing price of the underlying security on the preceding day. Any additional strikes listed by the Exchange shall be within 30% above or below the current price of the underlying security. The existing rules also provide that the Exchange may open additional strikes of Short Term Options Series that are more than 30% above or below the current price of the underlying security if demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account are not considered when determining customer interest.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65789; File No. SR–OCC–2011–14]**

## Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Clearing Options on the CBOE Silver Volatility Index

November 18, 2011.

## I. Introduction

On September 27, 2011, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2011–14 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change as amended.

## II. Description

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of options on the CBOE Silver ETF Volatility Index, which is an index that measures the implied volatility of options on the iShares Silver Trust, an exchange-traded fund designed to reflect the performance of the price of silver.[3] To accomplish this purpose, OCC is proposing to amend the interpretation and policy following the introduction in Article XVII of OCC's By-Laws to clarify that OCC will clear and treat as securities options any option contracts on the CBOE Silver ETF Volatility Index. On June 14, 2010, the Commission approved rule filing SR–OCC–2010–07, which added the existing interpretation, which relates to the treatment and clearing of options on the CBOE Gold ETF Volatility Index.[4]

In its capacity as a ''derivatives clearing organization'' registered as such with the CFTC, OCC has filed this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the ''CEA'') in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA.

## III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative transactions.[5] The proposed rule change is similar to a proposed rule change the Commission approved previously with respect to the jurisdictional status CBOE Gold ETF Volatility Index and clarifies that OCC will clear and treat as securities any relative performance index, including in situations in which one of the reference securities of a relative performance index is an ETF designed to measure the return of gold

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The staff notes that on August 11, 2011, the Commission issued an Order granting approval of a proposed rule change to trade options on the CBOE Silver ETF Volatility Index. *See* Securities Exchange Act Release No. 34–65116, 76 FR 51099 (August 17, 2011).

[4] Securities Exchange Act Release No. 62290 (June 14, 2010), 75 FR 35861 (June 23, 2010).

[5] 15 U.S.C. 78a–1(b)(3)(F).

or silver. Any uncertainty regarding the jurisdictional status of a product could presumably interfere with OCC's ability to provide clearance and settlement services with respect to the product. The proposed rule change, by allowing OCC confirm in its rules the treatment of a relative performance index, should facilitate the clearance and settlement of such products and, thus, should help promote the prompt and accurate clearance and settlement of securities transactions and of derivative transactions.

## IV. 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 Act [6] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–2011–14) be, and hereby is, approved.[8]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30227 Filed 11–22–11; 8:45 a.m.]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(2).

[8] In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65768; File No. SR–NASDAQ–2011–151]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees to BATS Exchange, Inc.

November 17, 2011.

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 November 8, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' 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 modify Rule 7050, governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. In addition the Exchange is also proposing to make minor amendments to Rule 7053, entitled ''NASDAQ Options Market—Access Services.''

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 1, 2011.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in brackets.

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

* * * * *

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the NasdaqTrader.com Web site.

| Exchange | Customer | Firm | MM | Professional |
|---|---|---|---|---|
| BATS | $0.36 | $0.55 | $0.55 | $0.[36]*48* |
| BOX | 0.06 | 0.55 | 0.55 | 0.06 |
| CBOE | 0.06 | 0.55 | 0.55 | 0.26 |
| CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs | 0.24 | 0.55 | 0.55 | 0.26 |
| C2 | 0.50 | 0.55 | 0.55 | 0.51 |
| ISE | 0.06 | 0.55 | 0.55 | 0.24 |
| ISE Select Symbols* | 0.18 | 0.55 | 0.55 | 0.34 |
| NYSE Arca Penny Pilot | 0.50 | 0.55 | 0.55 | 0.50 |
| NYSE Arca Non Penny Pilot | 0.06 | 0.55 | 0.55 | 0.06 |
| NYSE AMEX | 0.06 | 0.55 | 0.55 | 0.26 |
| PHLX (for all options other than PHLX Select Symbols) | 0.06 | 0.55 | 0.55 | 0.26 |
| PHLX Select Symbols** | 0.30 | 0.55 | 0.55 | 0.46 |

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

* * * * *

7053. NASDAQ Options Market—Access Services

[Part A: The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market for NOM 1.0:]

[(a) Financial Information Exchange (FIX) ]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

| [Ports] | [Quantity] | [Price] |
|---|---|---|
| [FIX Trading Port] | [First 25 ports] | [$500/port/month] |
| | [Additional ports above 25] | [$250/port/month] |
| [FIX Port for Services Other than Trading] | [First 25 ports] | [$500/port/month] |
| | [Additional ports above 25] | [$250/port/month] |

[(b) TradeInfo]

[• Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of $95 per user per month.]

[(c) Other Port Fees]

[The following port fees shall apply in connection with the use of other trading telecommunication protocols:]

| [Quantity] | [Price] |
|---|---|
| [First 25 ports] | [$500 per month for each port pair] |
| [Additional ports above 25] | [$250 per month for each port pair] |

[Part B: The following charges are assessed by Nasdaq for connectivity to the NASDAQ Options Market for NOM 2.0 as of August 26, 2011 through September 30, 2011:]

[(a) TradeInfo]

[• Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of $95 per user per month.]

[(b) Port Fees, per port per month, as follows:]

| | |
|---|---|
| [Order Entry Port Fee] | [$0.00] |
| [CTI Port Fee] | [$0.00] |
| [OTTO Port Fee] | [$0.00] |
| [ITTO Port Fee] | [$0.00] |
| [Order Entry DROP Port Fee] | [$0.00] |
| [OTTO DROP Port Fee] | [$0.00] |
| [SQF Port Fee] | [$0.00] |

[Part C:] The following charges[*] are assessed by Nasdaq for connectivity to the NASDAQ Options Market [as of October 3, 2011]:

(a) TradeInfo

• Members not subscribing to the Nasdaq Workstation using TradeInfo will be charged a fee of $95 per user per month.

(b) Port Fees, per port per month, as follows:

| | |
|---|---|
| Order Entry Port Fee | $500.00 |
| CTI Port Fee | $500.00 |
| OTTO Port Fee | $500.00 |
| ITTO Port Fee | $500.00 |
| Order Entry DROP Port Fee | $500.00 |
| OTTO DROP Port Fee | $500.00 |
| SQF Port Fee | $0.00 |

[* As of October 3, 2011, the fees in Parts A and B shall no longer apply. All NOM Participants will be assessed the fees in Part C.]

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing fees assessed for option orders entered into NOM but routed to and executed on away markets (''Routing Fees''). Specifically, NASDAQ is proposing to amend the Professional Routing Fee for orders routed to the BATS Exchange, Inc. (''BATS'').

The Exchange currently assesses the following Routing Fees to route orders to BATS: a Customer is assessed $0.36 per contract; a Firm is assessed $0.55 per contract; a Market Maker is assessed $0.55 per contract; and a Professional is assessed $0.36 per contract. The Exchange is proposing to amend the Professional Routing Fee to BATS from $0.36 per contract to $0.48 per contract. The other BATS Routing Fees for Customers, Firms and Market Makers would remain the same.

BATS recently adopted a definition for a professional and amended its Fee Schedule to assess a fee of $.42 for professionals that remove liquidity from BATS Options.[3] The Exchange is proposing to amend its Professional Routing Fee to BATS to recoup this fee. In addition, NASDAQ Options Services LLC (''NOS''), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange is proposing this amendment in order to recoup clearing and transaction charges incurred by the Exchange when Professional orders are routed to BATS.[4]

In addition, the Exchange proposes to amend Exchange Rule 7053 to remove outdated text. The Exchange previously filed a rule change to amend Exchange Rule 7053 in connection with trading system enhancements that were to take place on October 3, 2011.[5] The rule change implemented new Access Services Fees for all NOM Participants as of October 3, 2011 at which time all NOM Participants were required to transition to the new trading platform. The effective fees as of October 3, 2011 are located in Part C of Rule 7053. At this time, the Exchange proposes to remove Parts A and B as they are no longer effective and also remove the reference to the words ''Part C'' and ''as of October 3, 2011'' and the note which states ''As of October 3, 2011, the fees in Parts A and B shall no longer apply. All NOM Participants will be assessed the fees in Part C.'' This language is no longer necessary with the deletion of

[3] *See* Securities Exchange Act Release No. 65694 (November 4, 2011) (SR–BATS–2011–046).

[4] The Exchange is proposing to recoup the $.42 per contract professional taker fee for orders routed to BATS along with the $0.06 clearing fee which is incurred by the Exchange, as explained herein.

[5] *See* Securities Exchange Act Release No. 65180 (August 22, 2011), 76 FR 53521 (August 26, 2011) (SR–NASDAQ–2011–111).

Parts A and B. The remaining text will reflect the existing fees.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the amendment to the BATS Professional Routing Fee is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing Professional orders to BATS on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the proposed Professional Routing Fee would enable the Exchange to recover the professional taker fee assessed by BATS, plus clearing fees for the execution of Professional orders. The Exchange also believes that the proposed Routing Fee is equitable and not unfairly discriminatory because it would be uniformly applied to all Professionals.

In addition, the Exchange believes that the proposed amendments to Exchange Rule 7053 are reasonable, equitable and not unfairly discriminatory because the amendments seek to remove outdated and unnecessary language from the Rule text. The amendments will clarify the current Rule for all NOM Participants.

NASDAQ is one of nine options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

*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.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and paragraph (f)(2) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–151 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–151. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing 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–NASDAQ–2011–151 and should be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30191 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65780; File No. SR–BX–2011–076]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Perform a Test of Routing Functionality

November 17, 2011.

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 November 10, 2011, NASDAQ OMX BX, Inc. (the ''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

BX is filing this proposed rule change to allow a limited use of its broker-dealer affiliate, Nasdaq Execution

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Services LLC (''NES''), to perform a test of routing functionality to be introduced by the Exchange. BX proposes to implement the rule change prior to November 14, 2011. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at BX'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

As provided in Rule 4758, BX recently adopted rules that will allow it to route orders to other trading venues for execution.[3] Routing will be performed by NES, a registered broker-dealer that is an affiliate of the Exchange. In order to ensure that the routing functionality is operating properly prior to making it available to members, the Exchange proposes to use NES to perform test trades in an actual security, so as to track the performance of the systems to be used by the Exchange from order entry to clearance and settlement.

The test will be performed through two buy orders for 100 shares in a highly liquid security, such as the Power Shares QQQ Trust. Upon the execution of each buy order, NES will enter an offsetting sell order in the same security for the same quantity, in order to close out the test position and minimize financial impact on the Exchange. For the buy orders, NES will submit a routable marketable limit order with a time-in-force of Immediate or Cancel to the Exchange, with instructions to route to a directed away market. The Exchange will then deliver the order to NES, as the routing broker, which will route to the designated away market and receive an execution back. The first offsetting sell order will be handled in a similar manner. The second offsetting sell order will be executed at the Exchange itself, to ensure that the Exchange's systems are correctly distinguishing between routed and non-routed trades. To the extent that the offsetting trades require the Exchange to pay out funds, the funds will be provided out of the cash accounts of the Exchange; to the extent that the trades result in a profit, the funds will be deposited in the cash accounts of the Exchange.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, BX believes that the change will allow it to perform adequate testing of its systems for routing member orders before such systems become operational. The Exchange believes that adequate testing of market functionality is an important component of the operation of the national market system.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to conduct a limited test to assess the performance of its routing functionality and related systems prior to implementation and use by its members. The Exchange believes that a limited test prior to the launch of its routing functionality will assist the Exchange in uncovering and fixing any potential ''bugs'' so as to increase the likelihood of a successful implementation. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to conduct a limited test without undue delay to ensure that its routing functionality and related systems are operating properly prior to implementation. Therefore, the Commission designates the proposal operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[3] Securities Exchange Act Release No. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR–BX–2011–048).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

*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–BX–2011–076 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–076. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing 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–BX–2011–076 andshould be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30179 Filed 11–22–11; 8:45 a.m.]

**BILLING CODE 8011–01–P**

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65774; File No. SR–CBOE–2011–108]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand the Weeklys Program

November 17, 2011.

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 November 14, 2011, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 5.5 and 24.9 to increase the number of option classes on which Short Term Options Series (''Weekly options'') may be opened in the Exchange's Short Term Option Series Program (''Weeklys Program'') from 15 to 25 classes.[5] The text of the proposed rule change is available on the Exchange's Web site *(http://www.cboe.org/legal),* at the Exchange's Office of the Secretary, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend Rules 5.5 and 24.9 by increasing the number of option classes on which Weekly options may be opened in the Exchange's Weeklys Program.[6] Currently, the Exchange may select up to 15 currently listed option classes on which Weekly options may be opened in the Weeklys Program.[7] The Exchange is proposing to increase this to a total of 25 classes on which Weekly options may be opened for trading. This is a competitive filing and is based on certain aspects of filings previously submitted by International Securities Exchange, LLC (''ISE''), The NASDAQ Stock Market LLC for the NASDAQ Options Market (''NOM''), and NASDAQ OMX PHLX, Inc. (''PHLX'').[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] This rule filing assumes that proposed changes to Rules 5.5(d)(1) and 24.9(A)(i) contained in a separate rule filing are effective. *See* Securities Exchange Act Release No. 65445 (September 30, 2011), 75 FR 62102 (October 6, 2011) (noticing SR–CBOE–2011–086, which proposes to increase the number of series permitted per class in the Weeklys Program from 20 series to 30 series).

[6] On July 12, 2005, the Commission approved the Weeklys Program on a pilot basis. *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63). The Weeklys Program was made permanent on April 27, 2009. *See* Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018).

[7] The Exchange previously increased the total number of classes on which Weekly options may be opened from 5 to 15 classes. *See* Securities Exchange Act Release No. 63877 (February 9, 2011), 76 FR 8794 (February 15, 2011) (SR–CBOE–2011–012) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand the Short Term Option Series Program).

[8] *See* Securities Exchange Act Release Nos. 65503 (October 6, 2011), 76 FR 63691 (October 13, 2011) (SR–ISE–2011–60); 65528 (October 11, 2011), 76 FR 64142 (October 17, 2011) (SR–NASDAQ–2011–138) and 65529 (October 11, 2011), 76 FR 64144 (October 17, 2011) (SR–PHLX–2011–131).

CBOE notes that on September 19, 2011, it formally submitted a filing to the Commission to increase the number of strikes that may be listed per class that participates in the Weeklys Program. That filing was noticed by the Commission on September 30, 2011. *See* Securities Exchange Act Release No. 65445 (September 30, 2011), 75 FR 62102 (October 6, 2011) (noticing SR–CBOE–2011–086). On September 23, 2011, ISE formally submitted a filing to the Commission similarly proposing to increase the number of strikes per class that participates in ISE's Weeklys Program. However, in that filing ISE also requested to increase the number of classes (from 15 to 25) that are eligible to participate in ISE's Weekly Program. CBOE's current filing is competitive in that it seeks to permit CBOE to increase the number of classes that may participate in its Weeklys Program at the same time similar changes become operative at other exchanges.

CBOE's Weeklys Program is codified in Rules 5.5 and 24.9. These rules provide that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than fifteen option classes that expire on the Friday of the following business week that is a business day. In addition to the 15-option class limitation, there is a limitation on the number of series that may be opened per class.[9] The strike price of each Weekly option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the Weekly options are initially opened for trading on the Exchange, and with strike prices being within 30% above or below the closing price of the underlying security from the preceding day. The Exchange is not proposing any changes to these additional Weeklys Program limitations other than to increase from 15 to 25 the number of option classes that may participate in the Weeklys Program.

The principal reason for the proposed expansion is market demand for adding, and not removing, Weekly option classes from the Weeklys Program. In order for the Exchange not to exceed the current 15-option class restriction, from time to time the Exchange has had to discontinue trading one short term option class before it could begin trading other option classes within the Weeklys Program. This has negatively impacted investors and traders, particularly retail public customers. These same market participants also repeatedly request that the Exchange add classes to the Weeklys Program, which the Exchange is unable to do as it has already reached its maximum allotment of 15 classes. The Exchange has also observed increased demand for more classes when market moving events, such as significant market volatility, corporate events, or large market, sector or individual issue price swings have occurred.

The Exchange notes that the Weeklys Program has been well-received by market participants, in particular by retail investors. The Exchange believes a modest increase to the number of classes that may participate in the Weeklys Program, such as the one proposed in this rule filing, will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes that participate in the Weeklys Program.

The Exchange believes that the Weeklys Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. The Exchange further believes this proposed rule change will provide investors with additional Weekly option classes for investment, trading and risk management purposes. Therefore, the Exchange requests a modest expansion of the current Weeklys Program.

The proposed increase to the number of classes eligible to participate in the Weeklys Program is required for competitive purposes as well as to ensure consistency and uniformity among the competing options exchanges that have adopted similar Weeklys Programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[10] of the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),[11] 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, and 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. The Exchange believes that expanding the Weeklys Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that expanding the Weeklys Program will provide the investing public and other market participants with additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the Weeklys Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because the number of series per class also remains limited, and the Exchange does not believe that the additional price points will result in fractured liquidity.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to proposed rule changes of ISE, NOM and PHLX. CBOE believes this proposed rule change is necessary to permit fair competition among the options exchanges with respect to their short term options programs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest

[9] *See* Rules 5.5 and 24.9.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[14] Therefore, the Commission designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–108 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–108. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing 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–2011–108 and should be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30198 Filed 11–22–11; 8:45 am]

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[14] *See* Securities Exchange Act Release No. 65771 (November 17, 2011) (SR–ISE–2011–60) (order approving expansion of Short Term Option Program).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65773; File No. SR–BX–2011–075]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BOX Rules To Expand the Short Term Option Series Program

November 17, 2011.

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 November 10, 2011, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Rules of the Boston Options Exchange Group, LLC (''BOX'') to expand the Short Term Option Series Program.

**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 purpose of this proposed rule change is to amend Supplementary Material .07 to Chapter IV, Section 6 (Series of Options Open for Trading) and Supplementary Material .02 to Chapter XIV, Section 10 (Terms of Index Options Contracts) to expand the Short Term Option Series Program (''Weeklys Program'')[4] so that BOX may select twenty-five option classes to participate in the Weeklys Program[5] and list a total of 30 Short Term Option Series (''Weekly Series'') for each option class that participates in the Weeklys Program.

The Weeklys Program is codified in Supplementary Material .07 to Chapter IV, Section 6 and Supplementary Material .02 to Chapter XIV, Section 10. These rules state that after an option class has been approved for listing and trading on BOX, BOX may open for trading on any Thursday or Friday that is a business day series of options on no more than fifteen option classes that expire on the Friday of the following business week that is a business day. In addition to the fifteen-option class limitation, there is also a limitation that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Exchange adopted the Weeklys Program on July 15, 2010. *See* Securities Exchange Act Release No. 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (SR–BX–2010–047).

[5] The Exchange previously increased the total number of option classes that may participate in the Weeklys Program from 5 to fifteen (15). *See* Securities Exchange Act Release No. 64009 (March 2, 2011), 76 FR 12771 (March 8, 2011) (SR–BX–2011–014).

no more than twenty series for each expiration date in those classes that may be opened for trading.[6] Furthermore, the strike price of each short term option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the Weekly options are initially opened for trading on BOX, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. BOX does not propose any changes to the Weeklys Program limitations other than to increase from fifteen to twenty-five the number of option classes that may be opened pursuant to the Weeklys Program and increase from 20 to 30 the number of Weekly Series that may be opened for each class of option selected to participate in the Weeklys Program.

The principal reason for the proposed expansion to the number of classes is customer demand for adding, or not removing, short term option classes from the Weeklys Program. BOX understands that other options exchanges, in order to not exceed the fifteen-option class restriction, from time to time, have had to discontinue trading one short term option class before beginning to trade other option classes within their Weeklys Program. BOX believes this has negatively impacted investors and traders, particularly retail public customers. BOX understands that market participants have also requested that other options exchanges add additional classes to the Weeklys Program. BOX notes that the Weeklys Program has been well received by market participants, in particular by retail investors. BOX believes a modest increase to the number of classes that may participate in the Weeklys Program, such as the one proposed herein, will permit the options exchanges to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes.

The principal reason for the proposed expansion to the number of series is market demand for additional series in Weeklys Options classes in which the maximum number of series (20) has already been reached. Specifically, BOX has observed increased demand for more series when market moving events, such as corporate events and large price swings, have occurred during the life span of an affected Weeklys Program class. Currently, in order to be able to respond to market demand, BOX is forced to delete or delist certain series in order to make room for more in demand series.[7] BOX finds this method to be problematic for two reasons.

First, BOX has received requests to keep series that it intends to delete/delist to make room for more in demand series. While market participants may access other markets for the deleted/delisted series, BOX would prefer that market participants trade these series at BOX. Second, this method can lead to competitive disadvantages among exchanges. If one exchange is actively responding to market demand by deleting/delisting and adding series, and another exchange is the last to list the less desirable series with open interest, this last exchange is stuck with those series and unable to list the in demand series (because to do so would result in more than 20 series being listed on that exchange). As a result, the maximum number of series per class of options that participates in the Program should be increased to 30 so that exchanges can list the full panoply of series that other exchange list and which the market demands.

To affect[sic] this change, the Exchange is proposing to amend the BOX rules to limit the initial number of series that may be opened for trading to 20 series and to limit the number of additional series that may be opened for trading to 10 series.

With regard to the impact of this proposal on system capacity, BOX has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes and series in the Weeklys Program.

BOX believes that the Weeklys Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. BOX further believes this proposed rule change will provide investors with additional short term option classes and series for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934[8] (the ''Act'') in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current short term options program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in greater number of securities. The Exchange believes that expanding the current program would provide the investing public and other market participants increased opportunities because an expanded program would provide market participants additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the Weeklys Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes. Further, the Exchange does not believe that the proposed rule change will result in a material proliferation of additional series because it is limited to a fixed number of series per class and the Exchange does not believe that the additional price points will result in fractured liquidity. Moreover, the Exchange believes the proposed rule change would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities.

*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

[6] However, if BOX opens less than twenty (20) short term options for a Short Term Option Expiration Date, additional series may be opened for trading on BOX when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by BOX shall be within thirty percent (30%) above or below the current price of the underlying security. BOX may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (market-makers trading for their own account shall not be considered when determining customer interest under this provision). Supplementary Material .07 to Chapter IV, Section 6 and Supplementary Material .02 to Chapter XIV, Section 10.

[7] BOX deletes series with no open interest and delists series with open interest if those series are open for trading on another exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

necessary or 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*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[12] Therefore, the Commission designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *See* Securities Exchange Act Release No. 65771 (November 17, 2011) (SR–ISE–2011–60) (order approving expansion of Short Term Option Program).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BX–2011–075 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–075. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–075 and should be submitted on or before December 14, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30197 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65770; File Nos. SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; BATS Y-Exchange, Inc.; NASDAQ OMX BX, Inc.; Chicago Board Options Exchange, Incorporated; C2 Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; The NASDAQ Stock Market LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; National Stock Exchange, Inc.; NASDAX OMX PHLX LLC; Notice of a Designation of a Longer Period for Commission Action on Proposed Rule Changes Relating to Trading Halts Due to Extraordinary Market Volatility

November 17, 2011.

**I. Introduction**

On September 27, 2011, each of BATS Exchange, Inc. (''BATS''), BATS Y-Exchange, Inc. (''BYX''), NASDAQ OMX BX, Inc. (''BX''), Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Incorporated (''C2''), Chicago Stock Exchange, Inc. (''CHX''), EDGA Exchange, Inc (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), National Stock Exchange, Inc. (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), NYSE Arca, Inc. (''NYSE Arca''), and NASDAQ OMX PHLX LLC (''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] proposed rule changes to amend certain of their respective rules relating to trading halts due to extraordinary market volatility. The proposed rule changes were published for comment in the **Federal Register** on October 4, 2011.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 65437 (September 28, 2011), 76 FR 61466 (October 4,

Commission received seven comment letters on these proposals.[5]

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day from the publication of notice of filing of these proposed rule changes is November 18, 2011. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on these proposed rule changes so that it has sufficient time to consider these proposed rule changes, which would revise the rules relating to trading halts due to extraordinary market volatility, and to consider the comment letters that have been submitted in connection with them.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates December 30, 2011, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove these proposed rule changes.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30193 Filed 11–22–11; 8:45 am]

**BILLING CODE 8011–01–P**

2011); 65428 (September 28, 2011), 76 FR 61453 (October 4, 2011); 65429 (September 28, 2011), 76 FR 61432 (October 4, 2011); 65433 (September 28, 2011), 76 FR 61453 (October 4, 2011); 65438 (September 28, 2011), 76 FR 61447 (October 4, 2011); 65426 (September 28, 2011), 76 FR 61460 (October 4, 2011); 65431 (September 28, 2011), 76 FR 61425 (May 12, 2011); 65440 (September 28, 2011), 76 FR 61444 (October 4, 2011); 65430 (September 28, 2011), 76 FR 61429 (October 4, 2011); 65425 (September 28, 2011), 76 FR 61438 (October 4, 2011); 65435 (May 6, 2011), 76 FR 61416 (October 4, 2011); 65436 (September 28, 2011), 76 FR 61450 (October 4, 2011); 65427 (September 28, 2011), 76 FR 61457 (October 4, 2011); 65432 (September 28, 2011), 76 FR 61422 (October 4, 2011); 65439 (September 28, 2011), 76 FR 61463 (October 4, 2011); 65434 (September 28, 2011), 76 FR 61419 (October 4, 2011).

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association, dated October 27, 2011; Letter to Commission, from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated October 25, 2011; Letter to Elizabeth M. Murphy, Secretary, Commission, from Craig S. Donohue, CME Group, Inc., dated October 25, 2011; Letter to Elizabeth M. Murphy, Secretary, Commission, from Commissioner Bart Chilton, Commodity Futures Trading Commission, dated October 25, 2011; Letter to Elizabeth M. Murphy, Secretary, Commission, from Richard H. Baker, President and CEO, Managed Funds Association, dated October 25, 2011; Letter from Suzanne H. Shatto, dated October 20, 2011; Letter from Mark Roszak, dated October 4, 2011.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

## DEPARTMENT OF TRANSPORTATION

### ITS Joint Program Office Webinar on Alternative Organizational Structures for a Certificate Management Entity; Notice of Public Meeting

**AGENCY:** Research and Innovative Technology Administration, U.S. Department of Transportation.

**ACTION:** Notice.

The U.S. Department of Transportation (USDOT) Intelligent Transportation System Joint Program Office (ITS JPO) will host a free public webinar on December 9, 2011 from 1:00–3 p.m. (EST) to seek input on a set of high-level, alternative organizational structures for a certificate management entity (CME) to support a trusted and secure connected vehicle environment.

Persons planning to attend the webinar should register by December 5, 2011 using the following link: *http://www.itsa.org/policywebinarregistration.* For additional questions, please contact Adam Hopps at (202) 680–0091.

The ITS JPO will present results from an early analysis of organizational models. This analysis will describe the functions that need to be performed by a CME; identify key constraints as well as institutional and policy requirements; model how those functions may be organized; and present a high level assessment of these organizational models against a set of evaluation criteria. Draft documentation of the analysis will be posted for comment at the following location on or before December 9, 2011 at: *http://www.its.dot.gov*. Stakeholders are asked to submit comments to: *ITSCME@dot.gov* by 8 p.m. (EST) on December 14, 2011. Written comments may be submitted to: ITS JPO, 1200 New Jersey Ave., SE (E33–316) Washington, DC 20590. This is not an official docket. Stakeholders will have additional opportunities to provide input in to this project at later stages, including via a public meeting planned for March 2012.

**Background**

Through 2014, the primary focus of the ITS JPO is a research initiative focused on developing rapid and secure wireless communications and trusted data exchanges among vehicles, roadside infrastructure, and passengers' personal communications devices. This innovative use of wireless communications provides the foundation for a connected environment for transportation that is intended to enable a multitude of applications to enhance surface transportation safety, mobility, and environmental performance.

In the end state, users need to have assurance that the system offers trusted and secure communications. That is the fundamental purpose of the Certificate Management System (or CME): To ensure that participants and their vehicles receive digital certificates that allow them to be trusted actors within the system and to access meaningful and trusted data that is generated by others. If trust in the communications breaks down, then trust in the overall connected environment erodes and users become reluctant to use it or rely on it. Trust can be violated in several ways:

• *Security of communications:* If communications are not considered secure, users will be less likely to trust the data that is generated by or accessible through the system.

• *Private data is compromised:* If technical and policy solutions are not in place to protect private data or users perceive that their private data could be made available to unauthorized third parties without their awareness and consent, they will not participate.

• *Corrupt or inaccurate data:* If the data can be altered or corrupted through malicious misbehavior by hackers, it may cause more safety problems than fixes.

The current study aims to analyze alternative operational models that describe potential organizational designs, institutional capabilities, and policies of a Certificate Management System. It also assesses the needs for operation, maintenance, and system enhancements over time. (This study is an institutional analysis only, not a technical analysis, and it is not intended to develop a system design.)

Issued in Washington, DC, on the 16th day of November 2011.

**John Augustine,**

*Managing Director, ITS Joint Program Office.*

[FR Doc. 2011–30216 Filed 11–22–11; 8:45 am]

**BILLING CODE 4910–HY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be held on December 14, 2011, at 10 a.m.

**ADDRESSES:** The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, 10th floor, MacCracken Room.

**FOR FURTHER INFORMATION CONTACT:** Renee Butner, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *telephone* (202) 267–5093; *fax* (202) 267–5075; *Email: Renee.Butner@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee taking place on December 14, 2011, at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. The Agenda includes:

1. Rulemaking Prioritization Working Group (RPWG) recommendation report.
2. New ARAC task: Commercial Air Tour Voluntary Accreditation Program.
3. Status Report from FAA on ARAC Recommendations:
   a. Process Improvement Working Group (PIWG).
   b. Air Tour Maintenance (CATM).
   c. Part 147.
4. Status Reports from Assistant Chairs.
5. Remarks from other EXCOM members.

Attendance is open to the interested public but limited to the space available. The FAA will arrange teleconference service for individuals wishing to join in by teleconference if we receive notice by December 5. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by December 5 to present oral statements at the meeting. The public may present written statements to the executive committee by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on November 17, 2011.

**Pamela A. Hamilton-Powell,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 2011–30247 Filed 11–22–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2011–49]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before December 13, 2011.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2011–1042 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at (202) 493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, Frances Shaver, ARM–207, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 18, 2011.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2011–1042.

*Petitioner:* The Boeing Company.

*Section of 14 CFR Affected:* Section 25.863(a), (b)(1), and (b)(3).

*Description of Relief Sought:* The relief requested would enable installation of the 314A26020–1 exhaust plug to satisfy the flammable-fluid fire protection requirements on Boeing Model 737–600/–700/–700C/–800/–900/–900ER airplanes.

[FR Doc. 2011–30248 Filed 11–22–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA – 2011–0318]**

### Alabama Metal Coil Securement Act; Petition for Determination of Preemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of petition for determination of preemption; request for comments.

**SUMMARY:** FMCSA requests comments on a petition submitted by the American Trucking Associations (ATA) requesting a determination that the State of Alabama's Metal Coil Securement Act is preempted by Federal law. FMCSA requests comments on what effect, if any, Alabama's metal coil load securement certification requirements may have on interstate commerce.

**DATES:** Comments are due on or before January 23, 2012.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. To allow effective public participation before the comment deadlines, however, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments. Do not submit the same comments by more than one method.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number for this action. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Refer to the Privacy Act heading on *http://www.regulations.gov* for further information.

*Public Participation:* The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the ''help'' section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this notice are in this docket. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. FMCSA will continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

**FOR FURTHER INFORMATION CONTACT:** Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–7056. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## Background

### *The Metal Coil Securement Act*

Alabama's Metal Coil Securement Act (the Act), enacted in 2009, prohibits a motor carrier from transporting metal coils in a movement that originates or terminates in Alabama unless the driver is certified in load securement (Ala. Code 32–9A–2(a)(4)a.). The law, as originally enacted, also required the driver to carry a copy of the certification in the vehicle and produce it upon demand (Ala. Code 32–9A–2(a)(4)b.). Maximum penalties for violating these requirements include fines of between $5,000 and $10,000, jail time and/or a court order prohibiting the driver from operating a commercial motor vehicle (CMV) in the State (Ala. Code 32–9A–4(d)—(g)). Alabama Promulgated Rule No. 760–X–1–.16, adopted on April 5, 2011, offers CMV drivers three options to become certified in load securement: (1) Obtain a Metal Coil Certificate by taking and passing the ''Securing Metal Coils Course'' available for $25.00 on the web site, *www.metalcoiltraining.com;* (2) obtain a commercial driver's license (CDL) endorsement that allows the driver to haul metal coils in the issuing State; or (3) obtain a Metal Coil Certificate from a motor carrier authorized by the Alabama Department of Public Safety (ADPS) to issue the Certificate, which would require the carrier's safety compliance officer to submit a notarized affidavit that he/she has personal knowledge that the carrier requires every driver to be trained in the requirements of 49 CFR 393.120 before hauling metal coils. Federal regulations for securing metal coil loads, codified in 49 CFR 393.120, do not require any such driver certification.

In June 2011, Alabama amended the Act, rescinding the requirement that drivers carry copies of their metal coil load securement certification in their vehicles. Currently, the Act continues to require drivers to obtain certification, as specified in Alabama Promulgated Rule No. 760–X–1–.16, but drivers are no longer required to produce the certification upon demand.

### *FMCSA and ATA responses*

On June 26, 2009, FMCSA sent a letter to then-Governor Bob Riley of Alabama stating that the Act appeared to be incompatible with the requirements of FMCSA's Motor Carrier Safety Assistance Program. FMCSA also drew attention to two Federal laws authorizing preemption of State legislation (49 U.S.C. 14506 and 31141) and indicated that they might be applicable. The Agency urged State officials to work together with FMCSA officials to resolve any conflict between State and Federal law. Governor Riley responded on August 26, 2009, explaining that the Act was adopted in response to a number of accidents in Alabama involving the transport of metal coils. Governor Riley took the position that Alabama's metal coil load securement certification requirements were not preempted by Federal law.

On December 22, 2010, ATA petitioned FMCSA for a determination that Alabama's metal coil load securement certification requirements and penalties create an unreasonable burden on interstate commerce and are preempted under 49 U.S.C. 31141. ATA contends that Alabama's requirement that drivers obtain certification in metal coil load securement is more stringent than and incompatible with Federal metal coil safety regulations.

In its December 22, 2010 letter, ATA also requested a determination that the requirement that the driver carry the certification and display it upon

demand is preempted by 49 U.S.C. 14506. The recent amendment to the Act, however, removed this requirement, rendering ATA's request moot. As a result, FMCSA does not address this issue.

By letter dated January 25, 2011, the ADPS responded to ATA's petition. ADPS acknowledged that the requirements of the Act are more stringent than Federal regulations, but stated that the requirements should not be preempted because they have safety benefits and do not place an unreasonable burden on interstate commerce.

**Applicable law**

Section 31141 of title 49, United States Code, prohibits States from enforcing a law or regulation on CMV safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) Has the same effect as a regulation prescribed under 49 U.S.C. 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations (FMCSRs); (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation (49 U.S.C. 31141(c)(1)). If the Secretary determines that a State law or regulation has the same effect as a regulation based on 31136, it may be enforced (49 U.S.C. 31141(c)(2)). A State law or regulation that is less stringent may not be enforced (49 U.S.C. 31141(c)(3)). And a State law or regulation the Secretary determines to be additional to or more stringent than a regulation based on 31136 may be enforced unless the Secretary decides that the State law or regulation (1) Has no safety benefit; (2) is incompatible with the regulation prescribed by the Secretary; or (3) would cause an unreasonable burden on interstate commerce (49 U.S.C. 31141(c)(4)). To determine whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the cumulative effect that the State's law or regulation and all similar laws and regulations of other States will have on interstate commerce (49 U.S.C. 31141(c)(5)). The Secretary's authority under 31141 is delegated to the FMCSA Administrator by 49 CFR 1.73(g).

**Request for Comments**

Although preemption under 31141 is a legal determination reserved to the judgment of the Agency, FMCSA seeks comment on what effect, if any, Alabama's metal coil load securement certification requirement has on interstate motor carrier operations. Commenters are also encouraged to submit information on similar requirements imposed by States other than Alabama. In requesting comments, FMCSA does not seek legal conclusions. FMCSA also seeks information on the safety, economic, and operational effects, including cumulative effects, of Alabama's and other States' requirements. FMCSA requests commenters to limit their submissions to these issues and to submit data supporting their positions. The Agency has placed in the docket for inspection: FMCSA's June 26, 2009 letter, Governor Riley's August 26, 2009 reply, ATA's December 22, 2010 petition, ADPS's January 25, 2011 response, the Alabama Metal Securement Act, the ADPS April 5, 2011 rule implementing the Metal Coil Securement Act, and the June 2011 amendments to the Metal Coil Securement Act.

Issued on: November 2, 2011.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2011–30237 Filed 11–22–11; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2011–0001–N–20]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, (FRA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on September 8, 2011 (76 FR 55726).

**DATES:** Comments must be submitted on or before December 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., 3rd Floor, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On September 8, 2011, FRA published a 60-day notice in the **Federal Register** soliciting comment on these ICRs for which the agency is seeking OMB approval. 76 FR 55726. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication of this Notice to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden being submitted for clearance by OMB as required by the PRA.

*Title:* Occupational Noise Exposure for Railroad Operating Employees.

*OMB Control Number:* 2130–0571.

*Type of Request:* Extension with change of a currently approved collection.

*Affected Public:* Businesses.

*Abstract:* The collection of information is used by FRA to ensure that railroads covered by this rule establish and implement—by specified

dates—noise monitoring, hearing conservation, and audiometric testing programs, as well as hearing conservation training programs, to protect their employees against the damaging and potentially dangerous effects of excessive noise in the everyday rail environment.

*Form Number(s):* N/A.

*Total Annual Estimated Burden Hours:* 35,301 hours.

*Addressee:* Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, *Attention:* FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira-submissions@omb.eop.gov*.

*Comments are invited on the following:* Whether the proposed 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.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on *November 17, 2011* .

**Michael Logue,**

*Acting Director, Office of Financial Management, Federal Railroad Administration.*

[FR Doc. 2011–30213 Filed 11–22–11; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

## Office of The Comptroller of The Currency

## FEDERAL RESERVE SYSTEM

## Federal Deposit Insurance Corporation

## Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Joint notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, without revision, the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a), which are currently approved information collections. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the reports. The agencies will then submit the reports to OMB for review and approval.

**DATES:** Comments must be submitted on or before January 23, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

*OCC:* Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention:* 1557–0100, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy comments at the OCC's Public Information Room, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

*Board:* You may submit comments, identified by FFIEC 009 or FFIEC 009a, by any of the following methods:

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

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

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

*Fax:* (202) 452–3819 or (202) 452–3102.

*Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

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

*FDIC:* You may submit written comments, which should refer to ''Country Exposure Reports, 3064–0017,'' by any of the following methods:

*Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.

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

*Email: Comments@FDIC.gov.* Include ''Country Exposure Reports, 3064–0017'' in the subject line of the message.

*Mail:* Gary A. Kuiper, Counsel, Attention: Comments, Room F–1086, 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 a.m. and 5 p.m.

*Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Additional information or a copy of the collection may be requested from:

*OCC:* Ira L. Mills or Mary H. Gottlieb, OCC Clearance Officers, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

*Board:* Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

*FDIC:* Gary Kuiper, Counsel, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Proposal to extend for three years, without revision, the following currently approved collections of information:

*Report Title:* Country Exposure Report and Country Exposure Information Report.

*Form Number:* FFIEC 009 and FFIEC 009a.

*Frequency of Response:* Quarterly.

*Affected Public:* Business or other for profit.

**OCC**

*OMB Number:* 1557–0100.

*Estimated Number of Respondents:* 16 (FFIEC 009), 9 (FFIEC 009a).

*Estimated Average Time per Response:* 70 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

*Estimated Total Annual Burden:* 4,480 burden hours (FFIEC 009), 189 burden hours (FFIEC 009a).

**Board**

*OMB Number:* 7100–0035.

*Estimated Number of Respondents:* 35 (FFIEC 009), 24 (FFIEC 009a).

*Estimated Average Time per Response:* 70 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

*Estimated Total Annual Burden:* 9,800 burden hours (FFIEC 009), 504 burden hours (FFIEC 009a).

**FDIC**

*OMB Number:* 3064–0017.

*Estimated Number of Respondents:* 21 (FFIEC 009), 10 (FFIEC 009a).

*Estimated Average Time per Response:* 70 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

*Estimated Total Annual Burden:* 5,880 burden hours (FFIEC 009), 210 burden hours (FFIEC 009a).

**General Description of Reports**

These information collections are mandatory: 12 U.S.C. 161 and 1817 (national banks), 12 U.S.C. 248(a), 1844(c), and 3906 (state member banks and bank holding companies); and 12 U.S.C. 1817 and 1820 (insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment.

**Abstract**

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of 1 percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

**Current Actions**

The agencies are not planning any revisions at this time. However, the agencies expect to propose revisions in the near future, including potential changes to the Country Codes used in the FFIEC 009 report in order to more closely match the Country Codes on the Department of the Treasury's Treasury International Capital (TIC) reports (OMB Nos.: 1505–0016, 0017, 0018, 0019, 0020, and 0024).

**Request for Comment**

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

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

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

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record.

Dated: November 10, 2011.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Board of Governors of the Federal Reserve System, November 17, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, this 16th day of November, 2011.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2011–30215 Filed 11–22–11; 8:45 am]

**BILLING CODE 4810–33–P 6714–01–P 6210–01–P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Rate for Use in Federal Debt Collection and Discount and Rebate Evaluation

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 11 of the Debt Collection Act of 1982, as amended, (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts owed to the Government. Treasury's Cash Management Requirements (TFM Volume I, Part 6, Chapter 8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. In addition, 5 CFR 1315.8 of the Prompt Payment rule on ''Rebates'' requires that this rate be used in determining when agencies should pay purchase card invoices when the card issuer offers a rebate. Notice is hereby given that the applicable rate is 1.00 percent for calendar year 2012.

**DATES:** The rate will be in effect for the period beginning on January 1, 2012, and ending on December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Inquiries should be directed to the Agency Enterprise Solutions Division, Financial Management Service, Department of the Treasury, 401 14th

Street SW., Washington, DC 20227 (*Telephone:* (202) 874–9428).

**SUPPLEMENTARY INFORMATION:** The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95–147, 91 Stat. 1227. Computed each year by averaging Treasury Tax and Loan (TT&L) investment rates for the 12-month period ending every September 30, rounded to the nearest whole percentage, for applicability effective each January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 percentage points. The rate in effect for the calendar year 2012 reflects the average investment rates for the 12-month period that ended September 30, 2011.

Dated: November 9, 2011.

**Sheryl R. Morrow,**

*Assistant Commissioner, Payment Management.*

[FR Doc. 2011–30160 Filed 11–22–11; 8:45 am]

**BILLING CODE 4810–35–M**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Actions Taken Pursuant to Executive Order 13382 Related to the Islamic Republic of Iran Shipping Lines (IRISL)

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons the names of six newly-designated entities whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

**DATES:** The designation by the Director of OFAC, pursuant to Executive Order 13382, of the six entities identified in this notice was effective on October 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, *tel.:* (202) 622–2490, Office of Foreign Assets Control; Assistant Director for Policy, *tel.:* (202) 622–4855, Office of Foreign Assets Control; or Chief Counsel (Foreign Assets Control), tel.: (202) 622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

#### Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On October 27, 2011, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated six entities whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

*Entities*

*Galliot Maritime Inc,* c/o Ocean Business Plaza Building, Torre Banesco Floor 14, Office Number 1404, Calle Aquino de la Guardia and Calle 47, Bella Vista, Panama City, Panama; c/o Hafiz Darya Shipping Co, No. 60, Ehteshamiyeh Square, 7th Neyestan Street, Pasdaran Avenue, Tehran, Iran; Email Address *info@vme.com.pa;* alt. Email Address *info@hdslines.com;* RUC # 1873702–1–717632 (Panama); Web site *www.vme.com.pa;* alt. Web site *www.hdslines.com; Telephone:* 5078306525; *Alt Telephone:* 982126100733; *Fax:* 5078306526; *Alt Fax:* 982120100734 [NPWMD].

*Indus Maritime Inc,* c/o Ocean Business Plaza Building, Torre Banesco Floor 14, Office Number 1404, Calle Aquino de la Guardia and Calle 47, Bella Vista, Panama City, Panama; c/o Hafiz Darya Shipping Co, No. 60, Ehteshamiyeh Square, 7th Neyestan Street, Pasdaran Avenue, Tehran, Iran; Email Address *info@vme.com.pa;* alt. Email Address *info@hdslines.com;* RUC # 1873701–1–717631 (Panama); Web site *www.vme.com.pa;* alt. Web site *www.hdslines.com; Telephone:* 5078306525; *Alt Telephone:* 982126100733; *Fax:* 5078306526; *Alt Fax:* 982120100734 [NPWMD].

*Kaveri Maritime Inc,* c/o Ocean Business Plaza Building, Torre Banesco Floor 14, Office Number 1404, Calle Aquino de la Guardia and Calle 47, Bella Vista, Panama City, Panama; c/o Hafiz Darya Shipping Co, No. 60, Ehteshamiyeh Square, 7th Neyestan Street, Pasdaran Avenue, Tehran, Iran; Email Address *info@vme.com.pa;* alt. Email Address *info@hdslines.com;* RUC # 1873621–1–717620 (Panama); Web site *www.vme.com.pa;* alt. Web site *www.hdslines.com; Telephone:* 5078306525; *Alt Telephone:* 982126100733; *Fax:* 5078306526; *Alt Fax:* 982120100734 [NPWMD].

*Melodious Maritime Inc,* c/o Ocean Business Plaza Building, Torre Banesco Floor 14, Office Number 1404, Calle Aquino de la Guardia and Calle 47,

Bella Vista, Panama City, Panama; c/o Hafiz Darya Shipping Co, No. 60, Ehteshamiyeh Square, 7th Neyestan Street, Pasdaran Avenue, Tehran, Iran; Email Address *info@vme.com.pa;* alt. Email Address *info@hdslines.com;* RUC # 1873529–1–717598 (Panama); Web site *www.vme.com.pa;* alt. Web site *www.hdslines.com; Telephone:* 5078306525; *Alt Telephone:* 982126100733; *Fax:* 5078306526; *Alt Fax:* 982120100734 [NPWMD].

*Mount Everest Maritime Inc,* c/o Ocean Business Plaza Building, Torre Banesco Floor 14, Office Number 1404, Calle Aquino de la Guardia and Calle 47, Bella Vista, Panama City, Panama; c/o Hafiz Darya Shipping Co, No. 60, Ehteshamiyeh Square, 7th Neyestan Street, Pasdaran Avenue, Tehran, Iran; Email Address *info@vme.com.pa;* alt. Email Address *info@hdslines.com;* RUC # 1873518–1–717595 (Panama); Web site *www.vme.com.pa;* alt. Web site *www.hdslines.com; Telephone:* 5078306525; *Alt Telephone:* 982126100733; *Fax:* 5078306526; *Alt Fax:* 982120100734 [NPWMD].

*Rishi Maritime Inc,* c/o Ocean Business Plaza Building, Torre Banesco Floor 14, Office Number 1404, Calle Aquino de la Guardia and Calle 47, Bella Vista, Panama City, Panama; c/o Hafiz Darya Shipping Co, No. 60, Ehteshamiyeh Square, 7th Neyestan Street, Pasdaran Avenue, Tehran, Iran; Email Address *info@vme.com.pa;* alt. Email Address *info@hdslines.com;* RUC # 1873623–1–717621 (Panama); Web site *www.vme.com.pa;* alt. Web site *www.hdslines.com; Telephone:* 5078306525; *Alt Telephone:* 982126100733; *Fax:* 5078306526; *Alt Fax:* 982120100734 [NPWMD].

Dated: November 7, 2011.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2011–30117 Filed 11–22–11; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Actions Taken Pursuant to Executive Order 13382 Related to the Islamic Republic of Iran Shipping Lines (IRISL)

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one vessel identified as property blocked because of its connection to the Islamic Republic of Iran Shipping Lines (IRISL) and is updating the entries on OFAC's list of Specially Designated Nationals and Blocked Persons of 14 already-blocked vessels to identify new names and/or other information.

**DATES:** The identification and updates made by the Director of OFAC, pursuant to Executive Order 13382, of the 15 vessels in this notice was effective on October 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, *tel.:* (202) 622–2490, Office of Foreign Assets Control; Assistant Director for Policy, *tel.:* (202) 622–4855, Office of Foreign Assets Control; or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

### Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On October 27, 2011, the Director of OFAC identified one vessel as property of IRISL, and updated the entries on OFAC's list of Specially Designated Nationals and Blocked Persons of 14 already-blocked IRISL vessels to identify new names or other information given to those vessels. Banks are instructed to reject any funds transfer referencing a blocked vessel and must notify OFAC, via facsimile with a copy of the payment instructions that funds have been returned to the remitter due to the possible involvement of a SDN vessel in the underlying transaction.

*Newly Identified Vessel*

IRAN SHAHR–E–KORD Container Ship 29,870DWT 23,200GRT Iran flag (IRISL); Vessel Registration Identification IMO 9270684 (Iran) (vessel) [NPWMD]

*Already-Blocked Vessels With New Information*

AZALEA (f.k.a. IRAN OCEAN CANDLE; f.k.a. LANTANA; f.k.a. OCEAN CANDLE) General Cargo 23,176DWT 16,694GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9167253 (Barbados) (vessel) [NPWMD]

BEGONIA (f.k.a. IRAN PRETTY SEA (KHUZESTAN); f.k.a. LAVENDER; f.k.a. PRETTY SEA) General Cargo 23,116DWT 16,694GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9167277 (Barbados) (vessel) [NPWMD]

CAMELLIA (f.k.a. IRAN SEA BLOOM; f.k.a. LODESTAR; f.k.a. SEA BLOOM) General Cargo 23,176DWT 16,694GRT Cyprus flag (IRISL); Vessel

Registration Identification IMO 9167291 (Cyprus) (vessel) [NPWMD]

CLOVER (f.k.a. BRILLIANCE; f.k.a. IRAN BRILLIANCE; f.k.a. MULBERRY) General Cargo 24,065DWT 16,621GRT Cyprus flag (IRISL); Vessel Registration Identification IMO 9051636 (Cyprus) (vessel) [NPWMD]

DIANTHE (f.k.a. HORSHAM; f.k.a. IRAN BAM) Bulk Carrier 73,664DWT 40,166GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9323833 (Barbados) (vessel) [NPWMD]

EGLANTINE (f.k.a. BLUEBELL; f.k.a. IRAN GILAN) Bulk Carrier 63,400DWT 39,424GRT Cyprus flag (IRISL); Vessel Registration Identification IMO 9193202 (Cyprus) (vessel) [NPWMD]

FILBERT (f.k.a. GRACEFUL) Bulk Carrier 76,000DWT 41,226GRT Cyprus flag (IRISL); Vessel Registration Identification IMO 9369722 (Cyprus) (vessel) [NPWMD]

GLOXINIA (f.k.a. IRAN SEA STATE; f.k.a. LILIED; f.k.a. SEA STATE) General Cargo 23,176DWT 16,694GRT Barbados flag (IRISL); Vessel Registration Identification IMO 9167265 (Barbados) (vessel) [NPWMD]

MAGNOLIA (f.k.a. LIMNETIC; f.k.a. SEA FLOWER) General Cargo 23,176DWT 16,694GRT Cyprus flag (IRISL); Vessel Registration Identification IMO 9167289 (Cyprus) (vessel) [NPWMD]

MAHSAN (f.k.a. GOLESTAN; f.k.a. IRAN GOLESTAN) Bulk Carrier 72,162DWT 39,517GRT Malta flag (IRISL); Vessel Registration Identification IMO 9226944 (Malta) (vessel) [NPWMD]

PARIN (f.k.a. IRAN KABEER) General Cargo 5,885DWT 4,991GRT Iran flag (IRISL); Vessel Registration Identification IMO 9076478 (Iran) (vessel) [NPWMD]

TARADIS (f.k.a. IRAN DARYA) General Cargo 3,850DWT 2,842GRT Iran flag (IRISL); Vessel Registration Identification IMO 9245304 (Iran) (vessel) [NPWMD]

VALERIAN (f.k.a. IRAN BRAVE; f.k.a. MARGRAVE) General Cargo 22,950DWT 16,620GRT Cyprus flag (IRISL); Vessel Registration Identification IMO 9051650 (Cyprus) (vessel) [NPWMD]

ZARSAN (f.k.a. IRAN MAZANDARAN; f.k.a. MAZANDARAN) Bulk Carrier 72,642DWT 39,424GRT Malta flag (IRISL); Vessel Registration Identification IMO 9193197 (Malta) (vessel) [NPWMD]

Dated: November 7, 2011.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2011–30121 Filed 11–22–11; 8:45 am]

BILLING CODE 4810–AL–P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Actions Taken Pursuant to Executive Order 13382 Related to the Islamic Republic of Iran Shipping Lines (IRISL)

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons additional identifying information associated with Soroush Sarzamin Asatir Ship Management Company, an entity designated on June 16, 2010, pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'' and whose property and interests in property are therefore blocked.

**DATES:** The publication of additional identifying information for Soroush Sarzamin Asatir Ship Management Company by the Director of OFAC, pursuant to Executive Order 13382, was effective on October 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance & Evaluation, *tel.:* (202) 622–2490, Office of Foreign Assets Control; Assistant Director for Policy, *tel.:* (202) 622–4855, Office of Foreign Assets Control; or Chief Counsel (Foreign Assets Control), *tel.:* (202) 622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

#### Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On October 27, 2011, the Director of OFAC supplemented the identifying information for Soroush Sarzamin Asatir Ship Management Company, and entity designated on June 16, 2010, pursuant to the Order, and whose property and interest in property is therefore blocked.

The entry for Soroush Sarzamin Asatir Ship Management Company on OFAC's list of Specially Designated Nationals and Blocked Persons now reads as follows:

SOROUSH SARZAMIN ASATIR SHIP MANAGEMENT COMPANY (a.k.a. RAHBARAN OMID DARYA SHIP MANAGEMENT COMPANY), No. 5 Shabnam Alley, Golzar Street, Fajr Street, Shahid Motahari Avenue, Tehran 193651, Iran; P.O. Box 19365–1114, Tehran, Iran; Business Registration Document # 341563; alt. Business Registration Document # 5466371 issued 2009 [NPWMD]

Dated: November 7, 2011.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2011–30108 Filed 11–22–11; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Removal From the List of Specially Designated Nationals and Blocked Persons of Certain Entities Listed Pursuant to Executive Order 13566

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is removing from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') the names of 42 entities that are listed pursuant to Executive Order 13566 of February 25, 2011, ''Blocking Property and Prohibiting Certain Transactions Related to Libya.''

**DATES:** The removal from the SDN List of the 42 entities identified in this notice is effective on November 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director for Sanctions Compliance & Evaluation, *tel.:* (202) 622–2490, Assistant Director for Licensing, *tel.:* (202) 622–2480, Assistant Director for Policy, *tel.:* (202) 622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), *tel.:* (202) 622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

### Background

On February 25, 2011, the President issued Executive Order 13566, ''Blocking Property and Prohibiting Certain Transactions Related to Libya'' (''E.O. 13566''), pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). E.O. 13566 blocks all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya; the persons listed in the Annex to E.O. 13566; and any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to meet the criteria set forth in E.O. 13566.

General License No. 8A authorizes *prospective* transactions involving the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya, as of September 19, 2011. Funds, including cash, securities, bank accounts, and investment accounts, and precious metals that were blocked pursuant to E.O. 13566 as of September 19, 2011, continue to remain blocked, except as otherwise authorized by OFAC.

Accordingly, OFAC is removing from the SDN List the names of the following 42 entities with whom *prospective* transactions are authorized pursuant to General License No. 8A:

1. AFRIQIYAH AIRWAYS, 1st Floor, Waha Building, 273, Omar Almokhtar Street, Ali Khalifa Zaidi Street, Tripoli, Libya; 273 Omar Al Mokhtar Street, P.O. Box 83428, Tripoli, Libya; Email Address *afriqiyah@afriqiyah.aero;* alt. Email Address *cargo@afriqiyah.aero;* Web site *http://www.afriqiyah.aero;* Telephone No. (218) 214442622; Telephone No. (218) 214444408; Telephone No. (218) 214444409; Telephone No. (218) 214449734; Telephone No. (218) 214449743; Fax No. (218) 213341181; Fax No. (218) 214449128; Fax No. (218) 213614102 [LIBYA2]
2. AGRICULTURAL BANK (a.k.a. AL MASRAF AL ZIRAE; a.k.a. LIBYAN AGRICULTURAL BANK), El Ghayran Area, Ganzor El Sharqya, P.O. Box 1100, Tripoli, Libya; Al Jumhouria Street, East Junzour, Al Gheran, Tripoli, Libya; Email Address *agbank@agribank-ly.org;* SWIFT/BIC AGRULYLT (Libya); Telephone No. (218) 214870586; Telephone No. (218) 214870714; Telephone No. (218) 214870745; Telephone No. (218) 213338366; Telephone No. (218) 213331533; Telephone No. (218) 213333541; Telephone No. (218) 213333544; Telephone No. (218) 213333543; Telephone No. (218) 213333542; Fax No. (218) 214870747; Fax No. (218) 214870767; Fax No. (218) 214870777; Fax No. (218) 213330927; Fax No. (218) 213333545 [LIBYA2]
3. AL WAFA BANK (a.k.a. MASSRAF AL WAFA), Dat El Imad Administrative Complex, Al Thawra Street, P.O. Box 84212, Tripoli, Libya; Email Address *info@alwafabank.com;* Telephone No. (218) 214815123; Fax No. (218) 214801247 [LIBYA2]
4. ARAB TURKISH BANK (a.k.a. A AND T BANK; a.k.a. ARAB–TURKISH BANK; a.k.a. ARAP TURK BANKASI), Valikonagi Cad. No: 10, Nisantasi 34367, Istanbul, Turkey; P.O. Box: 150, Sisli 34360, Istanbul, Turkey; Havuzlu Sok. No: 3, 06540 Asagi Ayranci, Ankara, Turkey; P.O. Box 38–06552, Canakaya, Ankara, Turkey; Derya Sol., Sisilkler Plaza, D Blok No: 14/1, Sahrayi Credit, Kadikoy, Istanbul, Turkey; Musalla Baglari Mah., Ahmet Milmi Nalcaci Cad., 1–Evkur Ishani No: 112/B–C, 42060 Selecuklu, Konya, Turkey; Cumhuriyet Mah., Vatan Cad. No: 22, 38040 Melikgazi, Kayseri, Turkey; Incilipinar Mah., Kibris Cad., Zeugma Is Merkezi, No: 13–14, 27090 Sehitkamil, Gaziantep, Turkey; Registration ID 146103 (Turkey); SWIFT/BIC ATUBTRIS (Turkey); Tel. No. (90) 2122250500; Tel. No. (90) 3124195101; Tel. No. (90) 3124195102; Tel. No. (90) 3124195103; Tel. No. (90) 3124195104; Tel. No. (90) 3124190883; Tel. No. (90) 3124190884; Tel. No. (90) 2163580800; Tel. No. (90) 2163580801; Tel. No. (90) 2163580802; Tel. No. (90) 2163580803; Tel. No. (90) 2163580805; Tel. No. (90) 2163580806; Tel. No. (90) 3322360716; Tel. No. (90) 3322360718; Tel. No. (90) 3322360719; Tel. No. (90) 3322360791; Tel. No. (90) 3322360792; Tel. No. (90) 3322360793; Tel. No. (90) 3522213933; Tel. No. (90) 3522213934; Tel. No. (90) 3522213935; Tel. No. (90) 3522213936; Tel. No. (90) 3522213980; Tel. No. (90) 3522213981; Tel. No. (90)

3422326200; Tel. No. (90) 3422326201; Tel. No. (90) 3422326202; Tel. No. (90) 3422326203; Tel. No. (90) 3422326204; Tel. No. (90) 3422326205; Fax No. (90) 2122255299; Fax No. (90) 2 [LIBYA2]

5. ARABIAN GULF OIL COMPANY (a.k.a. AGOCO), AGOCO Building, P.O. Box 263, Al Kish, Benghazi, Libya [LIBYA2]
6. AZZAWIYA OIL REFINING COMPANY (a.k.a. AZAWIYA OIL; a.k.a. AZZAWIYA OIL REFINING COMPANY INC; a.k.a. ZAWIA OIL REFINING COMPANY; a.k.a. ''ARC''), Azzawiya Oil Refining Building, 45 Km West of Tripoli, Al Harsha Area, Azzawiya, Libya; Azzawiya Oil Refining Building, Al harsha Area, P.O. Box 15715, Az Zawiyah, Libya [LIBYA2]
7. BREGA PETROLEUM MARKETING COMPANY (a.k.a. BPMC; a.k.a. BREGA MARKETING COMPANY), P.O. Box 402, Tripoli, Libya; Coast Road, P.O. Box 16649, Az Zawiyah, Libya; Ben Shatwan Street, P.O. Box 1278, Benghazi, Libya [LIBYA2]
8. DALIA ADVISORY LTD, 11 Upper Brook Street, London W1K 6PB, United Kingdom [LIBYA2]
9. FIRST GULF LIBYAN BANK, The 7th of November Street, P.O. Box 81200, Tripoli, Libya; SWIFT/BIC FGLBLYLT (Libya); Telephone No. (218) 213622262; Fax No. (218) 213622205 [LIBYA2]
10. GENERAL COMPANY FOR CHEMICAL INDUSTRIES (a.k.a. ABU KAMMASH; a.k.a. GCCI), Abu Kammash Chemical Complex, Hadba Al Khadra, P.O. Box 100/411 and 100/071, Zuara, Libya; General Company for Chemical Industries Building, Abu Kammash Area, P.O. Box 411, Al Nuqat Al Khams, Zuwarah 100, Libya; Telephone No. (218) 213615181–5; Telephone No. (218) 213609426; Telephone No. (218) 213609427; Telephone No. (218) 212136081; Telephone No. (218) 213615186; Telephone No. (218) 213615181; Fax No. (218) 213609433; Fax No. (218) 213601712; Fax No. (218) 213615184; Fax No. (218) 213615014; Fax No. (218)213609433; Email Address *gcci-abukamash@gcci.ly;* Web site *http://www.gcci.ly* [LIBYA2]
11. GENERAL NATIONAL MARITIME TRANSPORT COMPANY (a.k.a. GNMTC), El Shaab Port, next to Passenger Terminal, P.O. Box 80173, Tripoli, Libya; Al Wahda Al Arabiya Building, Gargarish Road, Abou Nawas, P.O. Box 80173, Tripoli, Libya; Telephone No. (218) 214843304; Telephone No. (218) 214843273; Telephone No. (218) 214843310; Telephone No. (218) 214808094; Fax No. (218) 2134843288; Fax No. (218) 214843272; Fax No. (218) 4843305; Fax No. (218) 214808094; Email Address *info@gnmtc.com;* Web site *http://www.gnmtc.com* [LIBYA2]
12. GHANA LIBYA ARAB HOLDING COMPANY (a.k.a. GHANA LIBYAN ARAB HOLDING COMPANY LIMITED; a.k.a. GLAHCO), 1st Circular Road, Opposite Midini Hotel, Cantonments, Kumasi, Ghana; Plot F32 and 33, 5th Circular Road, East Cantonments, P.O. Box AN7281, Accra, Ghana; Telephone No. (233) 21774962; Telephone No. (233) 21762481; Telephone No. (233) 302774962; Telephone No. (233) 302762454; Telephone No. (233) 244322261; Fax No. (233) 21774839; Email Address *karmus@glahco.com*; Email Address *glahco@glahco.com* [LIBYA2]
13. GLAHCO HOTELS AND TOURISM DEVELOPMENT COMPANY LIMITED (a.k.a. GOLDEN TULIP HOTEL ACCRA), Liberation Road, Opposite Police Church, P.O. Box 16033, Accra, Ghana; Telephone No. (233) 21775360; Telephone No. (233) 21775362; Telephone No. (233) 21775366; Telephone No. (233) 21213161; Telephone No. (233) 202013326; Telephone No. (233) 21775361; Email Address *Herbert.friese@goldentuli paccra.com;* Web site *http://www.goldentulipaccra.com* [LIBYA2]
14. GUMHOURIA BANK (f.k.a. AL OUMMA BANK; a.k.a. JAMAHIRIYA BANK; f.k.a. MASRAF AL GUMHOURIA; f.k.a. UMMA BANK), Umar Al Mukhtar Street, Tripoli, Libya; Al Shohadaa Building, Mehammed El Magrif, P.O. Box 3224, Tripoli, Libya; SWIFT/BIC JAMBLYLT (Libya); Telephone No. (218) 21333553; Telephone No. (218) 21333555; Telephone No. (218) 213332888; Telephone No. (218) 214442541; Fax No. (218) 213333793; Fax No. (218) 214442476 [LIBYA2]
15. HAROUGE OIL OPERATIONS (a.k.a. HAROUGE; f.k.a. VEBA OIL LIBYA GMBH), Al Magharba Street, P.O. Box 690, Tripoli, Libya [LIBYA2]
16. JAMAHIRIYA OIL WELL FLUIDS AND EQUIPMENT (a.k.a. JOWEF OIL TECHNOLOGY; a.k.a. JOWFE; a.k.a. JOWFE CO. FOR OIL TECHNOLOGY; a.k.a. JOWFE OIL TECHNOLOGY COMPANY), Ganfouda area, 15 Km Qaminis Road, P.O. Box 9019, Benghazi, Libya; 15 Km Qaminis Road, Benghazi, Libya [LIBYA2]
17. LAFICO ALGERIA HOLDING (a.k.a. LAFICO ALGERIA), Street 19, Freres Addour, Bir Mourad Rais, Chafaa Adour, Algiers 16300, Algeria; Email Address *laficoalgeria @hotmail.com;* Telephone no. (213) (21) (541703); Telephone no. (213) (21) (541110); Fax no. (213) (21) (541704) [LIBYA2]
18. LIBYA AFRICA INVESTMENT PORTFOLIO (a.k.a. LAIP; a.k.a. LAP), Jumhoria Street, P.O. Box 91330, Tarabulus, Tripoli, Libya; Email Address *info@lap.ly;* Web site *http://www.lap.ly* [LIBYA2]
19. LIBYAN AFRICAN INVESTMENT COMPANY (a.k.a. LAAICO; a.k.a. LAICO; a.k.a. LIBYAN ARAB AFRICAN INVESTMENT COMPANY; a.k.a. THE LAICO GROUP), Janzoor (neighborhood), Tripoli, Libya; P.O. Box 81370, Tarabulus, Tripoli, Libya; Email Address *info@laaico.com;* Web site *http://www.laaico.com* [LIBYA2]
20. LIBYAN ARAB FOREIGN BANK LIMITED (a.k.a. LAFB; a.k.a. LIBYAN ARAB FOREIGN BANK; a.k.a. LIBYAN FOREIGN BANK), P.O. Box 2542 Tower 2, Dat Al-Imad Complex, Tripoli, Libya; Dat Elemad Administrative Complex, Tower No. 2, Tripoli, Libya; Web site *www.lafbank.com;* alt. Web site *http://www.lfbank.ly;* Telephone No. (218) 213350160; Telephone No. (218) 213350161; Telephone No. (218) 213350155; Fax No. (218) 213350164 [LIBYA2]
21. LIBYAN ARAB FOREIGN INVESTMENT COMPANY (a.k.a. LAFICO; a.k.a. LIBYAN FOREIGN INVESTMENT COMPANY), Libyan Arab Foreign Investment Company Building, Al Tharwa Street, P.O. Box 4538, Gharyan Area, Tarabulus, Tripoli, Libya; Email Address *info@ lafico.ly;* Web site *http://www.lafico.ly* [LIBYA2]
22. LIBYAN INVESTMENT AUTHORITY (a.k.a. LIA; a.k.a. LIBYAN INVESTMENT CORPORATION), Office No. 99, 9th Floor, Bourj Al Fatih Tower, Tripoli, Libya; Email Address *info @libyaninvestment.com;* Web site *http://www.lia.ly;* Telephone No. (218) 213351034; Telephone No. (218) 213362091; Telephone No. (218) 213362085; Fax No. (218) 213351035; Fax No. (218) 213362082; Fax No. (218) 213362084 [LIBYA2]
23. LIBYAN JAMAHIRIYA BROADCASTING CORPORATION,

POB 333, Ahsaat Street, Tripoli, Libya; Email Address *info@ljbc.net;* alt. Email Address *info@en.ljbc.net;* Web site *http://www.ljbc.net;* alt. Web site *www.en.ljbc.net;* Telephone no. (218) (21) (4445926); Fax no. (218) (21) (3402107) [LIBYA2]

24. LIBYAN NORWEGIAN FERTILISER COMPANY (a.k.a. LIFECO), Airport Highway, Sidi Sleem Area, Tripoli, Libya; Plant Libyan Norwegian Fertiliser Company, Marsa el Brega, Libya; Web site *http://www.lifeco.ly* [LIBYA2]
25. MEDITERRANEAN OIL SERVICES COMPANY (a.k.a. MEDITERRANEAN SEA OIL SERVICES COMPANY), Bashir El Saadawy Street, P.O. Box 2655, Tripoli, Libya [LIBYA2]
26. MEDITERRANEAN OIL SERVICES GMBH (a.k.a. MED OIL OFFICE DUSSELDORF; a.k.a. MEDOIL), Werdener Str. 8, Dusseldorf, Nordhein-Westfalen 40227, Germany [LIBYA2]
27. NATIONAL BANKING CORPORATION, Al Dhahra Area, Near Qasr Libya Hotel, P. O. Box 80930, Tripoli, Libya; SWIFT/BIC NBCLLYLT (Libya); Telephone No. (218) 214444524; Telephone No. (218) 214444870; Telephone No. (218) 21902524510; Telephone No. (218) 214444267; Fax No. (218) 213330896 [LIBYA2]
28. NATIONAL COMMERCIAL BANK (a.k.a. BANK WATANI; a.k.a. NATIONAL COMMERCIAL BANK SAL), Orouba Street, Al Baida, P.O. Box 543, Tripoli, Libya; SWIFT/BIC LNCBLYLT (Libya); Telephone No. (218) 213612267; Telephone No. (218) 213612429; Telephone No. (218) 213610306; Telephone No. (218) 213617977; Telephone No. (218) 214441168; Telephone No. (218) 214446019; Fax No. (218) 213610306; Fax No. (218) 214448878 [LIBYA2]
29. NATIONAL OIL CORPORATION (a.k.a. LIBYA NATIONAL OIL CORPORATION; a.k.a. LNOC; a.k.a. NATIONAL OIL CORPORATION—LIBYA; a.k.a. NOC), National Oil Corporation Building, Bashir Al Saadawi Street, P.O. Box 2655, Tarabulus, Tripoli, Libya [LIBYA2]
30. NATIONAL OIL FIELDS AND TERMINALS CATERING COMPANY, Airport Road Km 3, Tripoli, Libya [LIBYA2]
31. NATIONAL OIL WELLS DRILLING AND WORKOVER COMPANY (a.k.a. NATIONAL OIL WELLS CHEMICAL AND DRILLING AND WORKOVER EQUIPMENT CO.; a.k.a. NATIONAL OIL WELLS DRILLING AND WORKOVER EQUIPMENT CO.), National Oil Wells Drilling and Workover Company Building, Omar Al Mokhtar Street, P.O. Box 1106, Tripoli, Libya [LIBYA2]
32. NORTH AFRICA COMMERCIAL BANK S.A.L. (a.k.a. NACB; a.k.a. NORTH AFRICA COMMERCIAL BANK; a.k.a. NORTH AFRICA COMMERCIAL BANK SAL), P.O. Box: 11–9575, Beirut, Lebanon; Justinian St., Aresco Centre, Beirut, Lebanon; Aresco Center, Justinien Street, Kantari Sector, Beirut, Lebanon; Sin El Fil, Mkalles Round About, SAR Bldg, Beirut, Lebanon; Registration ID 30199 (Lebanon) issued 13 Oct 1973; SWIFT/BIC NACBLBBE (Lebanon); Telephone No. (961 1) 759000; Telephone No. (961 1) 485670; Telephone No. (961 1) 485671; Telephone No. (961 1) 485681; Telephone No. (961 1) 485682; Telephone No. (961 1) 485683; Telephone No. (961 1) 742900; Telephone No. (961 1) 495404; Fax No. (961 1) 346322; Fax No. (961 1) 759099; Fax No. (961 1) 751687; Fax No. (961 1) 485681; Email Address *info@nacb.com.lb;* Email Address *nacb@sodetel.net.lb;* Web site *http://www.nacb.com.lb* [LIBYA2]
33. NORTH AFRICA INTERNATIONAL BANK (a.k.a. NAIB; a.k.a. NAIB BANK; a.k.a. NORTH AFRICA INTERNATIONAL BANK SA), Avenue Kheireddine Pacha, Lotissement Ennasim Montplaisir (Bourjel), 1002, Tunis, Tunisia; Avenue Kheireddine Pacha, Cite Ennasim Montplaisir, 1002, Tunis, Tunisia; P.O. Box 485, 1080, Tunis Cedex, Tunisia; Bizerte Centre, 7000, Bizerte, Tunisia; Ennasim Mont Plaisir Building, Kheireddine Pacha Street, Taksim Al Nassim, 1002, Tunis, Tunisia; Boulevard 7 Novembre, Route El Kantaoui, 4011, Hammam Sousse, Tunisia; Immeuble Mirage II, Avenue Magida Boulila, Near the Medicine Institute, 3027, Sfax El Jadida, Tunisia; Registration ID B 1101511997 (Tunisia) issued 1 Nov 1984; SWIFT/BIC NOAFTNTT (Tunisia); Telephone No. (216) 71950800; Telephone No. (216) 72422100; Telephone No. (216) 73370370; Fax No. (216) 71950840; Fax No. (216) 71950254; Fax No. (216) 72422533; Fax No. (216) 73370371; Email Address *naib@naibank.com;* Web site *http://www.naib.com* [LIBYA2]
34. NORTH AFRICAN GEOPHYSICAL EXPLORATION COMPANY (a.k.a. NAGECO; a.k.a. NORTH AFRICAN GEOPHYSICAL EXPLORATION), Airport Road, Ben Ghasir 6.7 KM, Tripoli, Libya [LIBYA2]
35. PAK–LIBYA HOLDING COMPANY, Finance and Trade Centre, 5th Floor, Block C, Shahrah-E–Faisal, Karachi 74400, Pakistan; Telephone No. 9221565155662; Telephone No. 92215651648; Telephone No. 92215651556; Telephone No. 92215651557; Telephone No. 92215651558; Telephone No. 92215651559; Email Address *info@paklibya.com.pk;* Web site *http://www.paklibya.com.pk* [LIBYA2]
36. RAS LANUF OIL AND GAS PROCESSING COMPANY (a.k.a. RASCO; a.k.a. RASLANUF OIL AND GAS REFINARY OIL COMPANY), Ras Lanuf Oil and Gas Processing Company Building, P.O. Box 2323, Ras Lanuf City, Libya; P.O. Box 2323, GSPLAJ, Tripoli, Libya; P.O. Box 1971, GSPLAJ, Benghazi, Libya [LIBYA2]
37. SAHARA BANK, 1st of September Street No. 10, P.O. Box 270, Tripoli, Libya; SWIFT/BIC SABKLYLT (Libya); Telephone No. (218) 214448066; Telephone No. (218) 213330724; Telephone No. (218) 213339390; Telephone No. (218) 214443061; Fax No. (218) 213337922; Fax No. (218) 213330068 [LIBYA2]
38. SAVINGS AND REAL ESTATE INVESTMENT BANK (a.k.a. EDDEKHAR BANK), Al Sreem Street—Abu Miliana Street, Al Masera Al Kobra Street, P.O. Box 2289, Tripoli, Libya; Khalifa Alzaidi Street, P.O. Box 2289, Tripoli, Libya; Email Address *edara@eddekharbank.com;* Telephone No. (218) 214449306; Telephone No. (218) 214449308; Telephone No. (218) 214449310; Telephone No. (218) 213330434; Telephone No. (218) 213330561; Telephone No. (218) 213331746; Telephone No. (218) 213344631; Telephone No. (218) 213344632; Telephone No. (218) 213344633; Telephone No. (218) 213344634; Fax No. (218) 214449309 [LIBYA2]
39. SIRTE OIL COMPANY FOR PRODUCTION MANUFACTURING OF OIL AND GAS (a.k.a. SIRTE OIL COMPANY; a.k.a. SIRTE OIL COMPANY (SOC) FOR PRODUCTION MANUFACTURING OF SIRTE OIL COMPANY; a.k.a. SIRTE OIL COMPANY FOR PRODUCTION AND MANUFACTURING OF OIL AND GAS LTD; a.k.a. SOC), Sirte Oil Company Building, Marsa Al Brega

Area, P.O. Box 385, Tripoli, Libya [LIBYA2]

40. THE ECONOMIC AND SOCIAL DEVELOPMENT FUND COMPANY (a.k.a. ECONOMIC SOCIAL AND DEVELOPMENT FUND; a.k.a. SOCIAL AND ECONOMIC DEVELOPMENT FUND; a.k.a. ''ESDF''), ESDF Building, Qaser Bin Ghasher Road, Salaheddine Cross, Tripoli, Libya; Email Address *info@esdf.ly*; Web site *http://www.esdf.ly;* Telephone No. (218) 214908893; Fax No. (218) 214918893; Fax No. (218) 214918894 [LIBYA2]
41. WAHA OIL COMPANY (a.k.a. OASIS OIL COMPANY; a.k.a. WAHA), Waha Oil Company Building, Airport Road, Al Akwakh Street, P.O. Box 395, Tripoli, Libya [LIBYA2]
42. ZUEITINA OIL COMPANY (a.k.a. ZOC; a.k.a. ZUEITINA), Zueitina Oil Building, Sidi Issa Street, Al Dahra Area, P.O. Box 2134, Tripoli, Libya [LIBYA2]

Dated: November 18, 2011.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2011–30293 Filed 11–22–11; 8:45 am]

BILLING CODE 4810–AL–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Agency Information Collection Activity; Proposed Collection

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before January 23, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Consolidated Returns—Limitations on the Use of Certain Losses and Deductions.

*OMB Number:* 1545–1237.

*Regulation Project Number:* TD 8823.

*Abstract:* Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. These regulations amend the current regulations regarding the use of certain losses and deductions by such corporations.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated total annual reporting burden:* 2,000 hours.

*Estimated average annual burden hours per respondent:* 15 minutes.

*Estimated number of respondents:* 8,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2011.

**Yvette Lawrence,**

*IRS Reports Clearance Officer.*

[FR Doc. 2011–30157 Filed 11–22–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 2290/SP/FR

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2290/SP/FR Heavy Highway Vehicle Use Tax Return.

**DATES:** Written comments should be received on or before January 23, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette Lawrence Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:** *Title:* Heavy Highway Vehicle Use Tax Return.

*OMB Number:* 1545–0143.

*Abstract:* Form 2290/SP/FR is used to compute and report the tax imposed by section 4481 on the highway use of certain motor vehicles. The information is used to determine whether the taxpayer has paid the correct amount of tax.

*Current Actions:* There are no changes being made to Form 2290 at this time.

*Type of Review:* Extension of a current OMB approval.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 440,000.

*Estimated Time per Respondent:* 22 hours, 36 minutes.

*Estimated Total Annual Burden Hours:* 27,548,640.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments Submitted In Response To This Notice Will Be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 2011.

**Yvette Lawrence,**

*IRS Reports Clearance Officer.*

[FR Doc. 2011–30161 Filed 11–22–11; 8:45 am]

**BILLING CODE 4830–01–P**

# FEDERAL REGISTER

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Part II

## Environmental Protection Agency

40 CFR Part 63

National Emissions Standards for Hazardous Air Pollutants: Ferroalloys Production; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[EPA–HQ–OAR–2010–0895; FRL–9491–8]**

**RIN 2060–AQ–11**

## National Emissions Standards for Hazardous Air Pollutants: Ferroalloys Production

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing amendments to the national emissions standards for hazardous air pollutants for Ferroalloys Production to address the results of the residual risk and technology review that the EPA is required to conduct under the Clean Air Act. These proposed amendments include revisions to particulate matter standards for electric arc furnaces, metal oxygen refining processes, and crushing and screening operations. The amendments also add emission limits for hydrochloric acid, mercury, polycyclic aromatic hydrocarbons, and formaldehyde from electric arc furnaces. Furthermore, the amendments expand and revise the requirements to control fugitive emissions from furnace operations and casting. Other proposed requirements related to testing, monitoring, notification, recordkeeping, and reporting are included. We are also proposing to revise provisions addressing periods of startup, shutdown, and malfunction to ensure that the rules are consistent with a recent court decision.

**DATES:** Comments must be received on or before January 9, 2012. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 23, 2011.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by December 5, 2011, a public hearing will be held on December 8, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2010–0895, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov,* Attention Docket ID Number EPA–HQ–OAR–2010–0895.
- *Fax:* (202) 566–9744, Attention Docket ID Number EPA–HQ–OAR–2010–0895.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center, EPA West (Air Docket), Attention Docket ID Number EPA–HQ–OAR–2010–0895, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID Number EPA–HQ–OAR–2010–0895. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions.* Direct your comments to Docket ID Number EPA–HQ–OAR–2010–0895. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *epa.gov/epahome/dockets.htm.*

*Docket.* The EPA has established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2010–0895. All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in regulations.gov or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

*Public Hearing.* If a public hearing is held, it will begin at 10 a.m. on December 8, 2011 and will be held at the EPA's campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Virginia Hunt, Office of Air Quality Planning and Standards (OAQPS), Sector Policies and Programs Division, (D243–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–0832.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Mr. Conrad Chin, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–1512; *fax number:* (919) 541–3207; and *email address: chin.conrad@epa.gov.* For specific information regarding the risk modeling methodology, contact Ms. Darcie Smith, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–2076; *fax number:* (919) 541–0840; and *email address: smith.darcie@epa.gov.* For information about the applicability of the National Emissions Standards for

Hazardous Air Pollutants (NESHAP) to a particular entity, contact the appropriate person listed in Table 1 of this preamble.

TABLE 1—LIST OF EPA CONTACTS FOR THE NESHAP ADDRESSED IN THIS PROPOSED ACTION

| NESHAP for: | OECA contact [1] | OAQPS contact [2] |
|---|---|---|
| Ferroalloys Production ..... | Cary Secrest, (202) 564–8661 *secrest.cary@epa.gov* ... | Conrad Chin, (919) 541–1512, *chin.conrad@epa.gov.* |

[1] EPA Office of Enforcement and Compliance Assurance.
[2] EPA Office of Air Quality Planning and Standards.

**SUPPLEMENTARY INFORMATION:**

## Preamble Acronyms and Abbreviations

Several acronyms and terms used to describe industrial processes, data inventories, and risk modeling are included in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

ACI Activated Carbon Injection
ADAF age-dependent adjustment factors
AEGL acute exposure guideline levels
AERMOD air dispersion model used by the HEM–3 model
ATSDR Agency for Toxic Substances and Disease Registry
BLDS bag leak detection system
BPT benefit-per-ton
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CFR Code of Federal Regulations
CIIT Chemical Industry Institute of Toxicology
$CO_2$ carbon dioxide
EJ environmental justice
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
ERT Electronic Reporting Tool
FR **Federal Register**
gr/dscf grains per dry standard cubic foot
HAP hazardous air pollutants
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.1.0
HI Hazard Index
HON hazardous organic national emissions standards for hazardous air pollutants
HQ Hazard Quotient
ICR information collection request
IRIS Integrated Risk Information System
kg/hr kilograms per hour
kg/hr/MW kilograms per hour per megawatt
km kilometer
lb/hr pounds per hour
lb/hr/MW pounds per hour per megawatt
lb/yr pounds per year
LML lowest measured level
MACT maximum achievable control technology
MACT Code Code within the National Emissions Inventory used to identify processes included in a source category
MDL method detection limit
mg/dscm milligrams per dry standard cubic meter
MIR maximum individual risk
MM millions
MW megawatt
NAC/AEGL Committee National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances
NAICS North American Industry Classification System
NAS National Academy of Sciences
NATA National Air Toxics Assessment
NESHAP National Emissions Standards for Hazardous Air Pollutants
NRC National Research Council
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
PAH polycyclic aromatic hydrocarbons
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PM particulate matter
POM polycyclic organic matter
QA quality assurance
RCRA Resource Conservation and Recovery Act
RDL representative detection level
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RfD reference dose
RIA Regulatory Impact Analysis
RTR residual risk and technology review
SAB Science Advisory Board
SBA Small Business Administration
SOP standard operating procedures
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
TPY tons per year
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
TTN Technology Transfer Network
UF uncertainty factor
$\mu g/m^3$ microgram per cubic meter
UMRA Unfunded Mandates Reform Act
UPL upper predictive limit
URE unit risk estimate
VCS voluntary consensus standards
WWW world wide web

*Organization of this Document.* The information in this preamble is organized as follows:

I. General Information
A. Summary of Costs and Benefits
B. What are NESHAP?
C. Does this action apply to me?
D. Where can I get a copy of this document and other related information?
E. What should I consider as I prepare my comments for the EPA?
II. Background
A. What is this source category and how did the 1999 MACT standards regulate its HAP emissions?
B. What data collection activities were conducted to support this action?
C. What other relevant background information from previous studies on ferroalloys emissions is available?
III. Analyses Performed
A. How did we address unregulated emissions sources?
B. How did we estimate risks posed by the source category?
C. How did we consider the risk results in making decisions for this proposal?
D. How did we perform the technology review?
E. What other issues are we addressing in this proposal?
IV. Analytical Results and Proposed Decisions
A. What are the results of our analyses and proposed decisions regarding unregulated pollutants?
B. What are the results of the risk assessment and analyses?
C. What are our proposed decisions based on risk acceptability and ample margin of safety?
D. What are the results and proposed decisions based on our technology review?
E. What other actions are we proposing?
F. What compliance dates are we proposing?
V. Summary of Cost, Environmental, and Economic Impacts
A. What are the affected sources?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
F. What demographic groups might benefit from this regulation?
VI. Request for Comments
VII. Submitting Data Corrections
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

## I. General Information

### *A. Summary of Costs and Benefits*

Consistent with the recently issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' we have estimated the costs and benefits of the proposed rule. The estimated net benefits of the proposed rule at a 3 percent discount rate are $67 to $170 million or $59 to $150 million at a 7 percent discount rate. The monetized benefits in this analysis are due to $PM_{2.5}$ co-benefits, as HAP benefits are not monetized. Table 2 presents a summary of the results of the analysis.

TABLE 2—SUMMARY OF THE ESTIMATED ANNUAL MONETIZED BENEFITS, SOCIAL COSTS, AND NET BENEFITS FOR THE PROPOSED RULE IN 2015

[Millions of 2010$] [a]

| | 3% Discount rate | 7% Discount rate |
|---|---|---|
| Total Monetized Benefits [b] | $71 to $170 | $63 to $160. |
| Total Social Costs [c] | $4.0 | $4.0. |
| Net Benefits | $67 to $170 | $59 to $150. |
| Non-monetized Benefits | Reduced exposure to Hazardous Air Pollutants (HAP), including Manganese, polycyclic aromatic hydrocarbons (PAH), Chromium, Arsenic, Nickel, and Mercury. | |

[a] All estimates are for implementation year 2015 (the benefit estimates use 2016 values as an approximation); and are rounded to two significant figures so numbers may not sum across columns. All fine particles are assumed to have equivalent health effects, but the benefit-per-ton (BPT) estimates vary because each ton of precursor reduced has a different propensity to become particulate matter $(PM)_{2.5}$. These benefits incorporate the conversion from precursor emissions to ambient fine particles. The BPT estimates are based on recent air quality modeling specific to the ferroalloys sector.
[b] All estimates are for 2016, which we use as an approximation for impacts in 2015.
[c] The compliance costs of the proposal serve as a proxy for the social costs. The compliance costs are estimated using a 7% interest rate.

Under the proposed amendments, ferroalloys production facilities are expected to incur $11.4 million in capital costs to install new air pollution controls and new or improved monitoring systems. We have estimated the annualized costs to be $4.0 million, which includes estimated monitoring and testing costs. Section V.C of this preamble contains more detail on these estimated cost impacts.

### *B. What are NESHAP?*

1. What is the statutory authority for this action?

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), CAA section 112(d) calls for us to promulgate national technology-based emission standards for hazardous air pollutants (NESHAP) for those sources. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. For major sources, these technology-based standards must reflect the maximum degree of emissions reductions of HAP achievable (after considering cost, energy requirements, and nonair quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

MACT standards must require the maximum degree of emissions reduction achievable through the application of measures, processes, methods, systems, or techniques, including, but not limited to, measures that (1) Reduce the volume of or eliminate pollutants through process changes, substitution of materials or other modifications; (2) enclose systems or processes to eliminate emissions; (3) capture or treat pollutants when released from a process, stack, storage, or fugitive emissions point; (4) are design, equipment, work practice, or operational standards (including requirements for operator training or certification); or (5) are a combination of the above. CAA section 112(d)(2)(A)–(E). The MACT standards may take the form of design, equipment, work practice, or operational standards where the EPA first determines either that, (1) a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutants, or that any requirement for, or use of, such a conveyance would be inconsistent with law; or (2) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. CAA sections 112(h)(1)–(2).

The MACT ''floor'' is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3), and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT floors for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on considerations of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

The EPA is then required to review these technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, under CAA section 112(d)(6). In conducting this review, the EPA is not obliged to completely recalculate the prior MACT determination. *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (DC Cir., 2008).

The second stage in standard-setting focuses on reducing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). This provision requires, first, that the EPA prepare a *Report to Congress* discussing (among other things) methods of calculating the risks

posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, and the EPA's recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report (*Residual Risk Report to Congress,* EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering the EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

CAA section 112(f)(2) requires us to determine for source categories subject to certain MACT standards, whether those emissions standards provide an ample margin of safety to protect public health. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million,'' the EPA must promulgate residual risk standards for the source category (or subcategory), as necessary to provide an ample margin of safety to protect public health. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards are sufficiently protective. *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (DC Cir. 2008). (''If EPA determines that the existing technology-based standards provide an ''ample margin of safety,'' then the Agency is free to readopt those standards during the residual risk rulemaking.'') The EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,[1] but must consider cost, energy, safety and other relevant factors in doing so.

Section 112(f)(2) of the CAA expressly preserves our use of the two-step process for developing standards to address any residual risk and our interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 **Federal Register** (FR) 38044, September 14, 1989). The first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards are to be set (unless an even more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect).

The terms ''individual most exposed,'' ''acceptable level'' and ''ample margin of safety'' are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) preserves the EPA's interpretation set out in the Benzene NESHAP, and the United States Court of Appeals for the District of Columbia Circuit in *NRDC* v. *EPA,* 529 F.3d 1077, concluded that the EPA's interpretation of subsection 112(f)(2) is a reasonable one. See *NRDC* v. *EPA,* 529 F.3d at 1083 (DC Cir. 2008), which says ''[S]ubsection 112(f)(2)(B) expressly incorporates the EPA's interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the **Federal Register.**'' See also, *A Legislative History of the Clean Air Act Amendments of 1990,* volume 1, p. 877 (Senate debate on Conference Report). We also notified Congress in the *Residual Risk Report to Congress* that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.,* 100 in 1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The Agency also stated that, ''The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risks to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population.'' The Agency went on to conclude that ''estimated incidence would be weighed along with other health risk information in judging acceptability.'' As explained more fully in our *Residual Risk Report to Congress,* the EPA does not define ''rigid line[s] of acceptability,'' but rather considers broad objectives to be weighed with a series of other health measures and factors (EPA–453/R–99–001, p. ES–11). The determination of what represents an ''acceptable'' risk is based on a judgment of ''what risks are acceptable in the world in which we live'' (*Residual Risk Report to Congress,* p. 178, quoting the Vinyl Chloride decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that ''EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately one in 10 thousand, that risk level is considered acceptable.'' 54 FR 38045. We discussed the maximum individual lifetime cancer risk (or maximum individual risk (MIR)) as being ''the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' *Id.* We explained that this measure of risk ''is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.'' *Id.* We acknowledge that maximum individual lifetime cancer risk ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded.'' *Id.*

Understanding that there are both benefits and limitations to using maximum individual lifetime cancer risk as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that ''consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.'' *Id.* Consequently, the presumptive risk level of 100 in one million (one in 10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination. Further, in the Benzene NESHAP, we noted that, ''Particular attention will also be accorded to the weight of evidence presented in the risk assessment of potential carcinogenicity or other health effects of a pollutant. While the same numerical risk may be estimated for an exposure to a pollutant judged to be a known human carcinogen, and to a pollutant considered a possible human carcinogen based on limited animal test data, the same weight cannot be accorded to both estimates. In considering the potential public health effects of the two pollutants, the Agency's judgment on acceptability,

[1] ''Adverse environmental effect'' is defined in CAA section 112(a)(7) as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas.

including the MIR, will be influenced by the greater weight of evidence for the known human carcinogen.'' Id. at 38046.

The Agency also explained in the 1989 Benzene NESHAP the following: ''In establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50-kilometer (km) exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emissions of pollutants.'' *Id.*

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone. As explained in the Benzene NESHAP, ''[e]ven though the risks judged 'acceptable' by EPA in the first step of the Vinyl Chloride inquiry are already low, the second step of the inquiry, determining an 'ample margin of safety,' again includes consideration of all of the health factors, and whether to reduce the risks even further * * *. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health as required by section 112.''

In *NRDC* v. *EPA,* 529 F.3d 1077, 1082 (DC Cir. 2008), the Court of Appeals held that section 112(f)(2) ''incorporates EPA's 'interpretation' of the Clean Air Act from the Benzene Standard, and the text of this provision draws no distinction between carcinogens and non-carcinogens.'' Additionally, the Court held there is nothing on the face of the statute that limits the Agency's section 112(f) assessment of risk to carcinogens. *Id.* at 1081–82. In the *NRDC* case, the petitioners argued, among other things, that section 112(f)(2)(B) applied only to non-carcinogens. The DC Circuit rejected this position, holding that the text of that provision ''draws no distinction between carcinogens and non-carcinogens,'' *id.,* and that Congress' incorporation of the Benzene standard applies equally to carcinogens and non-carcinogens.

In the ample margin of safety decision process, the Agency again considers all of the health risks and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f). 54 FR 38046.

2. How do we consider the risk results in making decisions?

As discussed in the previous section of this preamble, we apply a two-step process for developing standards to address residual risk. In the first step, the EPA determines if risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR)[2] of approximately one in 10 thousand [*i.e.,* 100 in one million].'' 54 FR 38045. In the second step of the process, the EPA sets the standard at a level that provides an ample margin of safety ''in consideration of all health information, including the number of persons at risk levels higher than approximately one in one million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.*

In past residual risk determinations, the EPA presented a number of human health risk metrics associated with emissions from the category under review, including: The MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum noncancer hazard index (HI); and the maximum acute noncancer hazard. In estimating risks, the EPA considered sources under review that are located near each other and that affect the same population. The EPA developed risk estimates based on the actual emissions from the source category under review as well as based on the maximum emissions allowed pursuant to the source category MACT standard. The EPA also discussed and considered risk estimation uncertainties. The EPA is providing this same type of information in support of these actions.

The Agency acknowledges that the Benzene NESHAP provides flexibility regarding what factors the EPA might consider in making our determinations and how they might be weighed for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that: ''The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of noncancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the Vinyl Chloride mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and, thereby, implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health.' ''

For example, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explains ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.'' Similarly, with regard to the ample margin of safety analysis, the Benzene NESHAP states that: ''EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological

[2] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

and economic factors (along with the health-related factors) vary from source category to source category.''

*C. Does this action apply to me?*

The regulated industrial source category that is the subject of this proposal is listed in Table 3. Table 3 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding the entities likely to be affected by this proposed action. The proposed standards, once finalized, will be directly applicable to affected sources. Federal, state, local, and tribal government entities are not affected by this proposed action. As defined in the MACT (major source) source category listing report published by the EPA in 1992, the ''Ferroalloys Production'' source category is any facility engaged in producing ferroalloys such as ferrosilicon, ferromanganese, and ferrochrome.[3] Subsequently, the EPA redefined the MACT source category when it promulgated the Ferroalloy MACT standard so that it now includes only major sources that produce products containing manganese. (64 FR 27450, May 20, 1999) The MACT standard applies specifically to two ferroalloy product types: ferromanganese and silicomanganese.

TABLE 3—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

| Source category | NESHAP | NAICS code [1] | MACT code [2] |
|---|---|---|---|
| Ferroalloys Production | Ferroalloys Production | 331112 | 0304 |

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.

*D. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web (WWW) through the EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The TTN provides information and technology exchange in various areas of air pollution control. Supporting documents and other relevant information including a version of the regulatory text showing specific proposed changes is located in the docket (EPA–HQ–OAR–2010–0895).

Additional information is available on the residual risk and technology review (RTR) Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions estimates and other data that were used as inputs to the risk assessment.

*E. What should I consider as I prepare my comments for the EPA?*

*Submitting CBI.* Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the 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 comments that includes information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2010–0895.

## II. Background

*A. What is this source category and how did the 1999 MACT standards regulate its HAP emissions?*

The NESHAP (or MACT rule) for Ferroalloys Production: Ferromanganese and Silicomanganese was promulgated on May 20, 1999 (64 FR 27450) and codified at 40 CFR part 63, subpart XXX.[4] The 1999 NESHAP applies to all new and existing ferroalloys production facilities that manufacture ferromanganese or silicomanganese and are major sources or are co-located at major sources of HAP emissions. The rule's product-specific applicability reflected the fact that there was only one known major source within the Ferroalloys Production source category at the time of promulgation. Since then, one other major source of silicomanganese has started production, but it was permitted as an existing source.

Today, there are two ferroalloys production facilities subject to the MACT rule. No greenfield manganese ferroalloys production facilities have been built in over 20 years, and we anticipate no greenfield manganese ferroalloys production facilities in the foreseeable future, although one facility is currently exploring expanding operations through the addition of a new furnace.

Ferroalloys are alloys of iron in which one or more chemical elements (such as chromium, manganese, and silicon) are added into molten metal. Ferroalloys are consumed primarily in iron and steel making and are used to produce steel and cast iron products with enhanced or special properties.

Ferroalloys within the scope of this source category are produced using submerged electric arc furnaces, which are furnaces in which the electrodes are submerged into the charge. The submerged arc process is a reduction smelting operation. The reactants consist of metallic ores (ferrous oxides, silicon oxides, manganese oxides, etc.) and a carbon-source reducing agent, usually in the form of coke, charcoal, high- and low-volatility coal, or wood chips. Raw materials are crushed and sized, and then conveyed to a mix house for weighing and blending. Conveyors, buckets, skip hoists, or cars transport the processed material to hoppers above the furnace. The mix is gravity-fed

[3] EPA. Documentation for Developing the Initial Source Category List—Final Report, EPA/OAQPS, EPA–450/3–91–030, July, 1992.

[4] The emission limits were revised on March 22, 2001 (66 FR 16024) in response to a petition for reconsideration submitted to the EPA following promulgation of the final rule, and a petition for review filed in the U.S. Court of Appeals for the District of Columbia Circuit.

through a feed chute either continuously or intermittently, as needed. At high temperatures in the reaction zone, the carbon source reacts with metal oxides to form carbon monoxide and to reduce the ores to base metal.[5] The molten material (product and slag) is tapped from the furnace, sometimes subject to post-furnace refining, and poured into casting beds on the furnace room floor. Once the material hardens, it is transported to product crushing and sizing systems and packaged for transport to the customer.

HAP generating processes include electrometallurgical (furnace) operations (smelting and tapping), other furnace room operations (ladle treatment and casting), building fugitives, raw material handling and product handling. HAP are emitted from ferroalloys production as process emissions, process fugitive emissions, and outdoor fugitive dust emissions.

Process emissions are the exhaust gases from the control devices, primarily the furnace control device, metal oxygen refining control device and crushing operations control device. The HAP in process emissions are primarily composed of metals (mostly manganese, arsenic, nickel, lead, mercury and chromium) and also may include organic compounds that result from incomplete combustion of coal, coke or other fuel that is charged to the furnaces as a reducing agent. There are also process metal HAP emissions from the product crushing control devices. Process fugitive emissions occur at various points during the smelting process (such as during charging and tapping of furnaces and casting) and are assumed to be similar in composition to the process emissions. Outdoor fugitive dust emissions result from the entrainment of HAP in ambient air due to material handling, vehicle traffic, wind erosion from storage piles, and other various activities. Outdoor fugitive dust emissions are composed of particulate metal HAP only.

The MACT rule applies to process emissions from the submerged arc furnaces, the metal oxygen refining process, and the product crushing equipment, process fugitive emissions from the furnace and outdoor fugitive dust emissions sources such as roadways, yard areas, and outdoor material storage and transfer operations. For process sources, the NESHAP specifies numerical emissions limits for particulate matter (as a surrogate for non-mercury (or particulate) metal HAP) from the electric (submerged) arc furnaces (including smelting and tapping emissions), with the specific limits depending on furnace type, size, and product being made. Particulate matter emission limits (again as a surrogate for particulate metal HAP) are also in place for process emissions from the metal oxygen refining process and product crushing and screening equipment. Table 4 is a summary of the applicable limits.

TABLE 4—EMISSION LIMITS IN SUBPART XXX

| New or reconstructed or existing source | Affected source | Applicable PM emission standards | Subpart XXX reference |
|---|---|---|---|
| New or reconstructed | Submerged arc furnace | 0.23 kilograms per hour per megawatt (kg/hr/MW) (0.51 pounds per hour per megawatt (lb/hr/MW) or 35 milligrams per dry standard cubic meter (mg/dscm) (0.015 grains per dry standard cubic foot (gr/dscf). | 40 CFR 63.1652(a)(1) and (a)(2) |
| Existing | Open submerged arc furnace producing ferromanganese and operating at a furnace power input of 22 megawatts (MW) or less. | 9.8 kg/hr (21.7 lb/hr) | 40 CFR 63.1652(b)(1) |
| Existing | Open submerged arc furnace producing ferromanganese and operating at a furnace power input greater than 22 MW. | 13.5 kg/hr (29.8 lb/hr) | 40 CFR 63.1652(b)(2) |
| Existing | Open submerged arc furnace producing silicomanganese and operating at a furnace power input greater than 25 MW. | 16.3 kg/hr (35.9 lb/hr) | 40 CFR 63.1652(b)(3) |
| Existing | Open submerged arc furnace producing silicomanganese and operating at a furnace power input of 25 MW or less. | 12.3 kg/hr (27.2 lb/hr) | 40 CFR 63.1652(b)(4) |
| Existing | Semi-sealed submerged arc furnace (primary, tapping, and vent stacks) producing ferromanganese. | 11.2 kg/hr (24.7 lb/hr) | 40 CFR 63.1652(c) |
| New, reconstructed, or existing. | Metal oxygen refining process | 69 mg/dscm (0.03 gr/dscf). | 40 CFR 63.1652(d) |
| New or reconstructed | Individual equipment associated with the product crushing and screening operation. | 50 mg/dscm (0.022 gr/dscf). | 40 CFR 63.1652(e)(1) |
| Existing | Individual equipment associated with the product crushing and screening operation. | 69 mg/dscm (0.03 gr/dscf). | 40 CFR 63.1652(e)(2) |

The 1999 NESHAP established a building opacity limit of 20 percent that is measured during the required furnace control device performance test. The rule provides an excursion limit of 60 percent opacity for one 6-minute period during the performance test. The opacity observation is focused only on emissions exiting the shop due solely to operations of any affected submerged arc furnace. In addition, blowing taps, poling and oxygen lancing of the tap hole; burndowns associated with electrode measurements; and maintenance activities associated with submerged arc furnaces and casting operations are exempt from the opacity standards specified in § 63.1653.

[5] EPA. AP–42, 12.4. Ferroalloy Production. 10/86.

For outdoor fugitive dust sources, as defined in § 63.1652, the 1999 NESHAP requires that plants prepare and operate according to an outdoor fugitive dust control plan that describes in detail the measures that will be put in place to control outdoor fugitive dust emissions from the individual outdoor fugitive dust sources at the facility. The owner or operator must submit a copy of the outdoor fugitive dust control plan to the designated permitting authority on or before the applicable compliance date.

*B. What data collection activities were conducted to support this action?*

In April 2010, we issued an information collection request (ICR), pursuant to CAA section 114, to the two companies that own and operate the two known ferroalloys production facilities producing ferromanganese and silicomanganese. The ICR requested available information regarding process equipment, control devices, point and fugitive emissions, practices used to control fugitive emissions, and other aspects of facility operations. The two companies completed the surveys for their facilities and submitted the responses to us in the fall of 2010. We also requested that the two facilities conduct additional emissions tests in 2010 for certain HAP from specific processes that were considered representative of the industry. Additional emissions testing was performed for most HAP metals (e.g., manganese, arsenic, chromium, lead, nickel and mercury), hydrochloric acid (HCl), formaldehyde, and PAH. The results of these tests were submitted to the EPA in the fall of 2010 and are available in the docket for this action.

During the development of this regulation we discovered other types of ferroalloys production facilities (e.g., non-manganese ferroalloy production) that are not subject to this NESHAP. We plan to gather additional information on these other types of sources, and then evaluate whether we need to establish MACT standards for these sources.

*C. What other relevant background information from previous studies on ferroalloys emissions is available?*

In addition to the emissions information and risk assessment described in this preamble, other sources of publicly available data exist. Based on historical emissions data from the EPA's Toxics Release Inventory, one of the manganese ferroalloys facilities in this source category [6] has been one of the highest-emitters of manganese in the country for at least 15 years (*http://www.epa.gov/enviro/facts/tri/index.html*). Several agencies have conducted studies of the emissions from this facility and potential health effects of those emissions.

The Agency for Toxic Substances and Disease Registry (ATSDR), of the U.S. Department of Health and Human Services, along with the Ohio Department of Health and the Ohio Environmental Protection Agency conducted two health consultations in the communities surrounding this manganese ferroalloys facility between 2004 and 2007. The investigations found average ambient concentrations of manganese at levels higher than background concentrations and higher than health benchmark concentrations. More information about these studies can be found at *http://www.atsdr.cdc.gov/sites/washington_marietta/index.html.*

As a result of these findings, a health study of chronic adult exposure to ambient manganese in the communities surrounding the facility was funded by the EPA. Available results show no significant differences in blood manganese concentrations or major health outcomes between residents living near the facility and residents in a comparison town; however some subtle, subclinical motor (movement) differences were found in residents in the town with the facility.[7]

In addition, under the EPA's School Air Toxics Initiative, ambient concentrations of manganese were monitored at three schools located near the ferroalloys production facility in late 2009. At these locations, mean manganese concentrations above the health benchmark value were observed. We note that the daily monitored values were in some cases above the RfC and in some cases below. The daily values were highly variable as they were likely influenced by wind direction and speed. More information about the health benchmark value is available in section III.B. More information on the School Air Toxics Initiative can be found at *http://www.epa.gov/schoolair/index/html,* while the study including the area around this facility can be found at *http://www.epa.gov/schoolair/pdfs/MariettaTechReport.pdf.* The monitoring was conducted for the School Air Toxics Initiative; however we do present a comparison of modeled concentrations to monitored concentrations in the Risk Assessment document, which is available in the docket.

## III. Analyses Performed

In this section, we describe the analyses performed to support the proposed decisions for the RTR for this source category.

*A. How did we address unregulated emissions sources?*

In the course of evaluating the Ferroalloys Production source category, we identified certain HAP for which we failed to establish emission standards in the original MACT. See *National Lime* v. *EPA,* 233 F. 3d 625, 634 (DC Cir. 2000) (EPA has ''clear statutory obligation to set emissions standards for each listed HAP''). Specifically, we identified and evaluated emissions standards for four HAP (or groups of HAP), described below, that are not specifically regulated in the existing 1999 MACT standard, or are only regulated for certain emissions points. As described below, for these HAP (or groups of HAP), we are proposing emissions limits pursuant to section 112(d)(2) and 112(d)(3). The results and proposed decisions based on the analyses performed pursuant to CAA section 112(d)(2) and 112(d)(3) are presented in section IV.A of this preamble.

1. Hydrochloric acid

We were unaware of the potential for hydrochloric acid (HCl) emissions when we developed the 1999 NESHAP. As a result, we did not establish standards for HCl for these sources in the 1999 NESHAP. We recently received HCl emissions data in response to the ICR. Therefore, we are proposing a standard pursuant to section 112(d)(2) and (d)(3) (as described further in section IV.A of this preamble).

2. Mercury

The 1999 NESHAP specified emissions limits for particulate metal HAP (*e.g.,* manganese, arsenic, nickel, chromium) in terms of a particulate matter emissions limit (*i.e.,* particulate matter is used as a surrogate for metal HAP that are mainly emitted in particulate form). There is no explicit standard for mercury, and a significant fraction of the mercury emissions are expected to be in gaseous mercury forms (*e.g.,* gaseous elemental mercury or gaseous oxidized mercury) with a smaller fraction in particulate form. Therefore, we are proposing a standard specifically for mercury pursuant to section 112(d)(2) and (d)(3) (as described further in section IV.A of this preamble).

[6] Eramet Marrietta, located in Marietta, Ohio.

[7] In press: Kim Y *et al.* Motor function in adults of an Ohio community with environmental manganese exposure. 2011 Neurotoxicology, doi: 10.1016/j. neuro.2011.07.011.

3. Polycyclic Aromatic Hydrocarbons

As described above, the 1999 NESHAP only regulated particulate metal HAP emissions and did not establish standards for PAH. Since then, we have determined that electric arc furnaces emit PAH, and we are proposing a standard pursuant to section 112(d)(2) and (d)(3) (as described further in section IV.A of this preamble).

4. Formaldehyde

As described above, the 1999 NESHAP only regulated particulate metal HAP emissions and did not establish standards for formaldehyde. Since then, we have determined that electric arc furnaces emit formaldehyde, and we are proposing a standard pursuant to section 112(d)(2) and (d)(3) (as described further in section IV.A of this preamble).

*B. How did we estimate risks posed by the source category?*

The EPA conducted a risk assessment that provided estimates of the MIR posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provided estimates of the distribution of cancer risks within the exposed populations, cancer incidence and an evaluation of the potential for adverse environmental effects for each source category. The risk assessment consisted of seven primary steps, as discussed below. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: *Draft Residual Risk Assessment for the Ferroalloys Production Source Category.* The methods used to assess risks (as described in the seven primary steps below) are consistent with those peer-reviewed by a panel of the EPA's Science Advisory Board (SAB) in 2009 and described in their peer review report issued in 2010;[8] they are also consistent with the key recommendations contained in that report.

1. Establishing the Nature and Magnitude of Actual Emissions and Identifying the Emissions Release Characteristics

The two existing ferromanganese and silicomanganese production facilities constitute the dataset that is the basis for the risk assessment. We estimated the magnitude of emissions using data collected through the ICR. In addition to the quality assurance (QA) of the source data for the facilities contained in the dataset, we also checked the coordinates of every emission source in the dataset through visual observations using tools such as GoogleEarth and ArcView. Where coordinates were found to be incorrect, we identified and corrected them to the extent possible. We also performed QA of the emissions data and release characteristics to ensure the data were reliable and that there were no outliers.

2. Establishing the Relationship Between Actual Emissions and MACT–Allowable Emissions Levels

The emissions data in the MACT dataset include estimates of the mass of emissions actually emitted during the specified annual time period. These ''actual'' emission levels are often lower than the emission levels that a facility might be allowed to emit and still comply with the MACT standards. The emissions level allowed to be emitted by the MACT standards is referred to as the ''MACT-allowable'' emissions level. This represents the highest emissions level that could be emitted by facilities without violating the MACT standards.

We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries residual risk rule (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP residual risk rules (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those previous actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable because these risks reflect the maximum level sources could emit and still comply with national emission standards. But we also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP. (54 FR 38044, September 14, 1989.)

For the Ferroalloys Production source category, we evaluated allowable stack emissions, based on the level of control required by the MACT standards compared to the level of reported actual emissions and available information on the level of control achieved by the emissions controls in use. Further explanation is provided in the technical document: *Draft Development of the RTR Emissions Dataset for the Ferroalloys Production Source Category,* which is available in the docket.

3. Conducting Dispersion Modeling, Determining Inhalation Exposures, and Estimating Individual and Population Inhalation Risks

Both long-term and short-term inhalation exposure concentrations and health risks from the source category addressed in this proposal were estimated using the Human Exposure Model (Community and Sector HEM–3 version 1.1.0). The HEM–3 performs three of the primary risk assessment activities listed above: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 km of the modeled sources, and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The air dispersion model used by the HEM–3 model (AERMOD) is one of the EPA's preferred models for assessing pollutant concentrations from industrial facilities.[9] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year of hourly surface and upper air observations for 189 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library, of United States Census Bureau census block[10] internal point locations and populations, provides the basis of human exposure calculations (Census, 2000). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by the EPA for HAP and other toxic air pollutants. These values are available at *http://www.epa.gov/ttn/atw/toxsource/summary.html* and are

[8] U.S. EPA SAB. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* May 2010.

[9] U.S. EPA Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[10] A census block is the smallest geographic area for which census statistics are tabulated.

discussed in more detail later in this section.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentrations of each of the HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, and 52 weeks per year for a 70-year period) exposure to the maximum concentration at the centroid of inhabited census blocks. Individual cancer risks were calculated by multiplying the estimated lifetime exposure to the ambient concentration of each of the HAP (in micrograms per cubic meter ($\mu g/m^3$)) by its unit risk estimate (URE), which is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use URE values from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without the EPA IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) URE values, where available. In cases where new, scientifically credible dose response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. In the case of nickel compounds, to provide a health protective estimate of potential cancer risks, we used the URE value for nickel subsulfide in this assessment. Based on past scientific and technical considerations, the determination of the percent of nickel subsulfide was considered a major factor for estimating the extent and magnitude of the risks of cancer due to nickel-containing emissions. Nickel speciation information for some of the largest nickel-emitting sources (including oil combustion, coal combustion, and others) suggested that at least 35 percent of the total nickel emissions may be soluble compounds and that the URE for the mixture of inhaled nickel compounds (based on nickel subsulfide, and representative of pure insoluble crystalline nickel) could be derived to reflect the assumption that 65 percent of the total mass of nickel may be carcinogenic. Based on consistent views of major scientific bodies (i.e., National Toxicology Program in their 12th Report on Carcinogens,[11] International Agency for Research on Cancer,[12] and other international agencies)[13] that consider all nickel compounds to be carcinogenic, we currently consider all nickel compounds to have the potential of being carcinogenic to humans. The major scientific bodies mentioned above have also recognized that there are differences in toxicity and/or carcinogenic potential across the different nickel compounds. More discussion of the nickel URE can be found in the risk assessment report in the docket for this action. For this analysis, to take a more health-protective approach, we considered all nickel compounds to be as carcinogenic as nickel subsulfide in our inhalation risk assessments and have applied the IRIS URE for nickel subsulfide without a factor to reflect the assumption that 100 percent of the total mass of nickel may be as carcinogenic as pure nickel subsulfide. In addition, given that there are two URE values[14] derived for exposure to mixtures of nickel compounds, as a group, that are 2–3 fold lower than the IRIS URE for nickel subsulfide, we also consider it reasonable to use a value that is 50 percent of the IRIS URE for nickel subsulfide for providing an estimate of the lower end of a plausible range of cancer potency values for different mixtures of nickel compounds.

We also note that polycyclic organic matter (POM) (of which PAH are a subset), a carcinogenic HAP with a mutagenic mode of action, is emitted by the facilities in this source category.[15] For this compound group,[16] the age-dependent adjustment factors (ADAF) described in the EPA's *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*[17] were applied. This adjustment has the effect of increasing the estimated lifetime risks for POM by a factor of 1.6. In addition, although only a small fraction of the total POM emissions were not reported as individual compounds, the EPA expresses carcinogenic potency for compounds in this group in terms of benzo[a]pyrene equivalence, based on evidence that carcinogenic POM has the same mutagenic mechanism of action as benzo[a]pyrene. For this reason, the EPA's Science Policy Council[18] recommends applying the *Supplemental Guidance* to all carcinogenic PAH for which risk estimates are based on relative potency. Accordingly, we have applied the ADAF to the benzo[a]pyrene equivalent portion of all POM mixtures.

Incremental individual lifetime cancer risks associated with emissions from the two facilities in the source category were estimated as the sum of the risks for each of the carcinogenic HAP (including those classified as carcinogenic to humans, likely to be carcinogenic to humans, and suggestive evidence of carcinogenic potential[19]) emitted by the modeled source. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of the sources were also estimated for the source category as part of this assessment by summing individual risks. A distance of 50 km is consistent with both the

[11] National Toxicology Program (NTP), 2011. Report on carcinogens. 12th ed. Research Triangle Park, NC: U.S. Department of Health and Human Services (DHHS), Public Health Service. Available online at *http://ntp.niehs.nih.gov/ntp/roc/twelfth/roc12.pdf.*

[12] International Agency for Research on Cancer (IARD), 1990. IARC monographs on the evaluation of carcinogenic risks to humans. Chromium, nickel, and welding. Vol. 49. Lyons, France: International Agency for Research on Cancer, World Health Organization Vol. 49:256.

[13] World Health Organization (WHO, 1991) and the European Union's Scientific Committee on Health and Environmental Risks (SCHER, 2006).

[14] Two UREs (other than the current IRIS values) have been derived for nickel compounds as a group: one developed by the California Department of Health Services (*http://www.arb.ca.gov/toxics/id/summary/nickel_tech_b.pdf*) and the other by the Texas Commission on Environmental Quality (*http://www.epa.gov/ttn/atw/nata1999/99pdfs/healtheffectsinfo.pdf*).

[15] U.S. EPA. Performing risk assessments that include carcinogens described in the *Supplemental Guidance* as having a mutagenic mode of action. *Science Policy Council Cancer Guidelines Implementation Work Group Communication I:* Memo from W.H. Farland, dated October 4, 2005.

[16] See the *Risk Assessment for Source Categories* document available in the docket for a list of HAP with a mutagenic mode of action.

[17] U.S. EPA *Supplemental Guidance for Assessing Early-Life Exposure to Carcinogens.* EPA/630/R-3/003F, 2005. *http://www.epa.gov/ttn/atw/childrens_supplement_final.pdf.*

[18] U.S. EPA *Science Policy Council Cancer Guidelines Implementation Workgroup Communication II:* Memo from W.H. Farland, dated June 14, 2006.

[19] These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's previous *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's Science Advisory Board (SAB) in their 2002 peer review of EPA's National Air Toxics Assessment (NATA) entitled, *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

analysis supporting the 1989 Benzene NESHAP (54 FR 38044) and the limitations of Gaussian dispersion models, including AERMOD.

To assess the risk of non-cancer health effects from chronic exposures, we summed the HQ for each of the HAP that affects a common target organ system to obtain the HI for that target organ system (or target organ-specific HI, TOSHI). The HQ is the estimated exposure divided by the chronic reference value, which is either the EPA reference concentration (RfC), defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime,'' or, in cases where an RfC from the EPA's IRIS database is not available, the EPA will utilize the following prioritized sources for our chronic dose-response values: (1) The Agency for Toxic Substances and Disease Registry Minimum Risk Level, which is defined as ''an estimate of daily human exposure to a substance that is likely to be without an appreciable risk of adverse effects (other than cancer) over a specified duration of exposure''; (2) the CalEPA Chronic Reference Exposure Level (REL), which is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration''; and (3), as noted above, in cases where scientifically credible dose-response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use those dose-response values in place of or in concert with other values.

Screening estimates of acute exposures and risks were also evaluated for each of the HAP at the point of highest off-site exposure for each facility (i.e., not just the census block centroids), assuming that a person is located at this spot at a time when both the peak (hourly) emission rate and worst-case dispersion conditions (1991 calendar year data) occur. The acute HQ is the estimated acute exposure divided by the acute dose-response value. In each case, acute HQ values were calculated using best available, short-term dose-response values. These acute dose-response values, which are described below, include the acute REL, acute exposure guideline levels (AEGL) and emergency response planning guidelines (ERPG) for 1-hour exposure durations. As discussed below, we used conservative assumptions for emission rates, meteorology and exposure location for our acute analysis.

As described in the CalEPA's Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants, an acute REL value (*http://www.oehha.ca.gov/air/pdf/acuterel.pdf*) is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' Acute REL values are based on the most sensitive, relevant, adverse health effect reported in the medical and toxicological literature. Acute REL values are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact.

AEGL values were derived in response to recommendations from the National Research Council (NRC). As described in *Standing Operating Procedures (SOP) of the National Advisory Committee on Acute Exposure Guideline Levels for Hazardous Substances (http://www.epa.gov/opptintr/aegl/pubs/sop.pdf)*,[20] ''the NRC's previous name for acute exposure levels—community emergency exposure levels—was replaced by the term AEGL to reflect the broad application of these values to planning, response, and prevention in the community, the workplace, transportation, the military, and the remediation of Superfund sites.'' This document also states that AEGL values ''represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to eight hours.'' The document lays out the purpose and objectives of AEGL by stating (page 21) that ''the primary purpose of the AEGL program and the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances is to develop guideline levels for once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' In detailing the intended application of AEGL values, the document states (page 31) that ''[i]t is anticipated that the AEGL values will be used for regulatory and nonregulatory purposes by U.S. Federal and state agencies and possibly the international community in conjunction with chemical emergency response, planning, and prevention programs. More specifically, the AEGL values will be used for conducting various risk assessments to aid in the development of emergency preparedness and prevention plans, as well as real-time emergency response actions, for accidental chemical releases at fixed facilities and from transport carriers.''

The AEGL–1 value is then specifically defined as ''the airborne concentration of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes (page 3) that, ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' Similarly, the document defines AEGL–2 values as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.''

ERPG values are derived for use in emergency response, as described in the American Industrial Hygiene Association's document entitled, *Emergency Response Planning Guidelines (ERPG) Procedures and Responsibilities* (*http://www.aiha.org/1documents/committees/ERPSOPs2006.pdf*) which states that, ''Emergency Response Planning Guidelines were developed for emergency planning and are intended as health based guideline concentrations for single exposures to chemicals.''[21] The ERPG–1 value is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' Similarly, the ERPG–2 value is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or

[20] NAS, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals*, page 2.

[21] *ERP Committee Procedures and Responsibilities*. November 1, 2006. American Industrial Hygiene Association.

developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.''

As can be seen from the definitions above, the AEGL and ERPG values include the similarly-defined severity levels 1 and 2. For many chemicals, a severity level 1 value AEGL or ERPG has not been developed because the types of effects for these chemicals are not consistent with the AEGL–1/ERPG–1 definitions; in these instances, higher severity level AEGL–2 or ERPG–2 values are compared to our modeled exposure levels to screen for potential acute concerns. When AEGL–1/ERPG–1 values are available, they are used in our acute risk assessments.

Acute REL values for 1-hour exposure durations are typically lower than their corresponding AEGL–1 and ERPG–1 values. Even though their definitions are slightly different, AEGL–1 values are often the same as the corresponding ERPG–1 values, and AEGL–2 values are often equal to ERPG–2 values. Maximum HQ values from our acute screening risk assessments typically result when basing them on the acute REL value for a particular pollutant. In cases where our maximum acute HQ value exceeds 1, we also report the HQ value based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1 value).

To develop screening estimates of acute exposures in the absence of hourly emissions data, generally we first develop estimates of maximum hourly emissions rates by multiplying the average actual annual hourly emissions rates by a default factor to cover routinely variable emissions. For the Ferroalloys Production source category hourly emissions estimates were available for individual emissions points, so we did not use the default factor of 10. Using emission test data, hourly emission rates were developed for those processes considered to operate continuously (i.e., steady-state operations for 8,760 hours per year) and for those processes considered to operate intermittently (i.e., non-steady-state operations for less than 8,760 hours per year). A discussion of the hourly emissions estimates is provided in the *Methodology for Estimation of Maximum Hourly Emissions for Ferroalloy Sources,* which is available in the docket for this action.

As part of our acute risk assessment process, for cases where acute HQ values from the screening step were less than or equal to 1, acute impacts were deemed negligible and no further analysis was performed. In cases where an acute HQ from the screening step was greater than 1, additional site-specific data were considered to develop a more refined estimate of the potential for acute impacts of concern. For this source category, the data refinements employed consisted of using the site-specific facility layout to distinguish facility property from an area where the public could be exposed. These refinements are discussed in the draft risk assessment document, which is available in the docket for this source category. Ideally, we would prefer to have continuous measurements over time to see how the emissions vary by each hour over an entire year. Having a frequency distribution of hourly emission rates over a year would allow us to perform a probabilistic analysis to estimate potential threshold exceedances and their frequency of occurrence. Such an evaluation could include a more complete statistical treatment of the key parameters and elements adopted in this screening analysis. However, we recognize that having this level of data is rare, hence our use of the multiplier approach.

To better characterize the potential health risks associated with estimated acute exposures to HAP, and in response to a key recommendation from the SAB's peer review of the EPA's RTR risk assessment methodologies,[22] we generally examine a wider range of available acute health metrics (e.g., RELs, AEGLs) than we do for our chronic risk assessments. This is in response to the SAB's acknowledgement that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. In some cases, when Reference Value Arrays [23] for HAP have been developed, we consider additional acute values (i.e., occupational and international values) to provide a more complete risk characterization.

4. Conducting Multipathway Exposure and Risk Screening

The potential for significant human health risks due to exposures via routes other than inhalation (i.e., multipathway exposures) and the potential for adverse environmental impacts were evaluated in a two-step process. In the first step, we determined whether any facilities emitted any PB–HAP (HAP known to be persistent and bio-accumulative in the environment). There are 14 PB–HAP compounds or compound classes identified for this screening in the EPA's Air Toxics Risk Assessment Library (available at *http://www.epa.gov/ttn/fera/risk_atra_vol1.html*). They are cadmium compounds, chlordane, chlorinated dibenzodioxins and furans, dichlorodiphenyldichloroethylene, heptachlor, hexachlorobenzene, hexachlorocyclohexane, lead compounds, mercury compounds, methoxychlor, polychlorinated biphenyls, POM, toxaphene and trifluralin.

Because one or more of these PB–HAP are emitted by at least one facility in the source category, we proceeded to the second step of the evaluation. In this step, we determined whether the facility-specific emission rates of each of the emitted PB–HAP were large enough to create the potential for significant non-inhalation human or environmental risks under reasonable worst-case conditions. To facilitate this step, we have developed emission rate thresholds for each PB–HAP using a hypothetical worst-case screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The hypothetical screening scenario was subjected to a sensitivity analysis to ensure that its key design parameters were established such that environmental media concentrations were not underestimated (*i.e.,* to minimize the occurrence of false negatives or results that suggest that risks might be acceptable when, in fact, actual risks are high) and to also minimize the occurrence of false positives for human health endpoints. We call this application of the TRIM.FaTE model TRIM–Screen. The facility-specific emission rates of each of the PB–HAP in the source category were compared to the TRIM–Screen emission threshold values for each of the PB–HAP identified in the source category datasets to assess the potential for significant human health risks or environmental risks via non-inhalation pathways.

5. Assessing Risks Considering Emissions Control Options

In addition to assessing baseline inhalation risks and screening for potential multipathway risks, we also estimated risks considering the potential emissions reductions that would be achieved by the main control options

[22] The SAB peer review of RTR Assessment Methodologies is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf*

[23] U.S. EPA. (2009) Chapter 2.9 Chemical Specific Reference Values for Formaldehyde in Graphical Arrays of Chemical-Specific Health Effect Referenhce Values for Inhalation Exposures (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/r-09/061, and available on-line at *http://cfpub.epa.gov/ncea/dfm/recordisplay.cfm?deid=211003.*

under consideration. In these cases, the expected emissions reductions were applied to the specific HAP and emissions points in the source category dataset to develop corresponding estimates of risk reductions.

6. Conducting Other Risk-Related Analyses: Facilitywide Assessments

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category of interest, but also emissions of HAP from all other emissions sources at the facility for which we have data. However, for the Ferroalloys Production source category, there are no other significant HAP emissions sources operating at present. Thus, there was no need to perform a separate facility wide risk assessment.

7. Considering Uncertainties in Risk Assessment

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the source category addressed in this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health-protective. A brief discussion of the uncertainties in the emissions dataset, dispersion modeling, inhalation exposure estimates and dose-response relationships follows below. A more thorough discussion of these uncertainties is included in the risk assessment documentation (*Draft Residual Risk Assessment for the Ferroalloys Production Source Category*) available in the docket for this action.

a. Uncertainties in the Emissions Dataset

Although the development of the RTR dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors were made in estimating emissions values and other factors. The emission estimates considered in this analysis generally are annual totals for certain years that do not reflect short-term fluctuations during the course of a year or variations from year to year.

The estimates of peak hourly emissions rates from stacks for the acute effects screening assessment were based on actual maximum hourly emissions estimates for individual emission points, which is intended to account for emissions fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

While the analysis employed the EPA's recommended regulatory dispersion model, AERMOD, we recognize that there is uncertainty in ambient concentration estimates associated with any model, including AERMOD. In circumstances where we had to choose between various model options, where possible, model options (*e.g.,* rural/urban, plume depletion, chemistry) were selected to provide an overestimate of ambient air concentrations of the HAP rather than underestimates. However, because of practicality and data limitation reasons, some factors (*e.g.,* meteorology, building downwash) have the potential in some situations to overestimate or underestimate ambient impacts. For example, meteorological data were taken from a single year (1991) and facility locations can be a significant distance from the site where these data were taken. Despite these uncertainties, we believe that at off-site locations and census block centroids, the approach considered in the dispersion modeling analysis should generally yield overestimates of ambient HAP concentrations.

c. Uncertainties in Inhalation Exposure

The effects of human mobility on exposures were not included in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.[24] The assumption of not considering short or long-term population mobility does not bias the estimate of the theoretical MIR, nor does it affect the estimate of cancer incidence because the total population number remains the same. It does, however, affect the shape of the distribution of individual risks across the affected population, shifting it toward higher estimated individual risks at the upper end and reducing the number of people estimated to be at lower risks, thereby increasing the estimated number of people at specific high risk levels (*e.g.,* one in 10,000 or one in one million).

In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. Using the census block centroid to predict chronic exposures tends to over-predict exposures for people in the census block who live farther from the facility and under-predict exposures for people in the census block who live closer to the facility. Thus, using the census block centroid to predict chronic exposures may lead to a potential understatement or overstatement of the true maximum impact, but is an unbiased estimate of average risk and incidence.

The assessment evaluates the cancer inhalation risks associated with pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emissions sources at facilities actually operate (*i.e.,* more or less than 70 years), and the domestic growth or decline of the modeled industry (*i.e.,* the increase or decrease in the number or size of United States facilities), will influence the future risks posed by a given source or source category. Depending on the characteristics of the industry, these factors will, in most cases, result in an overestimate both in individual risk levels and in the total estimated number of cancer cases. However, in rare cases, where a facility maintains or increases its emissions levels beyond 70 years, residents live beyond 70 years at the same location, and the residents spend most of their days at that location, then the risks could potentially be underestimated. Annual cancer incidence estimates from exposures to emissions from these sources would not be affected by uncertainty in the length of time emissions sources operate.

The exposure estimates used in these analyses assume chronic exposures to ambient levels of pollutants. Because most people spend the majority of their time indoors, actual exposures may not be as high, depending on the characteristics of the pollutants modeled. For many of the HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, these levels are typically lower. This factor has the potential to result in an overstatement of 25 to 30 percent of exposures.[25]

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that should be highlighted. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of

[24] Short-term mobility is movement from one micro-environment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

[25] U.S. EPA. National-Scale Air Toxics Assessment for 1996. (EPA 453/R–01–003; January 2001; page 85.)

independent factors that may vary greatly, such as hourly emissions rates, meteorology, and human activity patterns. In this assessment, we assume that individuals remain for 1 hour at the point of maximum ambient concentration as determined by the co-occurrence of peak emissions and worst-case meteorological conditions. These assumptions would tend to be worst-case actual exposures as it is unlikely that a person would be located at the point of maximum exposure during the time of worst-case impact.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and non-cancer effects from both chronic and acute exposures. Some uncertainties may be considered quantitatively, and others generally are expressed in qualitative terms. We note as a preface to this discussion a point on dose-response uncertainty that is brought out in the EPA's *2005 Cancer Guidelines;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (*EPA 2005 Cancer Guidelines,* pages 1–7). This is the approach followed here as summarized in the next several paragraphs. A complete detailed discussion of uncertainties and variability in dose-response relationships is given in the residual risk documentation which is available in the docket for this action.

Cancer URE values used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit).[26] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[27] When developing an upper bound estimate of risk and to provide risk values that do not underestimate risk, health-protective default approaches are generally used. To err on the side of ensuring adequate health protection, the EPA typically uses the upper bound estimates rather than lower bound or central tendency estimates in our risk assessments, an approach that may have limitations for other uses (*e.g.,* priority-setting or expected benefits analysis).

Chronic non-cancer reference (RfC) and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. Specifically, these values provide an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure (RfC) or a daily oral exposure (RfD) to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. To derive values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993, 1994) which considers uncertainty, variability and gaps in the available data. The UF are applied to derive reference values that are intended to protect against appreciable risk of deleterious effects. The UF are commonly default values,[28] *e.g.,* factors of 10 or 3, used in the absence of compound-specific data; where data are available, UF may also be developed using compound-specific information. When data are limited, more assumptions are needed and more UF are used. Thus, there may be a greater tendency to overestimate risk in the sense that further study might support development of reference values that are higher (*i.e.,* less potent) because fewer default assumptions are needed. However, for some pollutants, it is possible that risks may be underestimated.

While collectively termed ''UF,'' these factors account for a number of different quantitative considerations when using observed animal (usually rodent) or human toxicity data in the development of the RfC. The UF are intended to account for: (1) Variation in susceptibility among the members of the human population (*i.e.,* inter-individual variability); (2) uncertainty in extrapolating from experimental animal data to humans (*i.e.,* interspecies differences); (3) uncertainty in extrapolating from data obtained in a study with less-than-lifetime exposure (*i.e.,* extrapolating from sub-chronic to chronic exposure); (4) uncertainty in extrapolating the observed data to obtain an estimate of the exposure associated with no adverse effects; and (5) uncertainty when the database is incomplete or there are problems with the applicability of available studies. Many of the UF used to account for variability and uncertainty in the development of acute reference values are quite similar to those developed for chronic durations, but they more often use individual UF values that may be less than 10. The UF are applied based on chemical-specific or health effect-specific information (*e.g.,* simple irritation effects do not vary appreciably between human individuals, hence a value of 3 is typically used), or based on the purpose for the reference value (see the following paragraph). The UF applied in acute reference value derivation include: (1) Heterogeneity among humans; (2) uncertainty in extrapolating from animals to humans; (3) uncertainty in lowest observed adverse effect (exposure) level to no observed adverse effect (exposure) level adjustments; and (4) uncertainty in accounting for an incomplete database on toxic effects of potential concern. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute reference value at another exposure duration (*e.g.,* 1 hour).

Not all acute reference values are developed for the same purpose and care must be taken when interpreting the results of an acute assessment of human health effects relative to the reference value or values being exceeded. Where relevant to the estimated exposures, the lack of short-term dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Although every effort is made to identify peer-reviewed reference values for cancer and noncancer effects for all pollutants emitted by the sources included in this assessment, some HAP continue to have no reference values for cancer or chronic noncancer or acute

[26] IRIS glossary (*http://www.epa.gov/NCEA/iris/help_gloss.htm*).

[27] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[28] According to the NRC report, *Science and Judgment in Risk Assessment* (NRC, 1994) ''[Default] options are generic approaches, based on general scientific knowledge and policy judgment, that are applied to various elements of the risk assessment process when the correct scientific model is unknown or uncertain.'' The 1983 NRC report, *Risk Assessment in the Federal Government: Managing the Process,* defined default option as ''the option chosen on the basis of risk assessment policy that appears to be the best choice in the absence of data to the contrary'' (NRC, 1983a, p. 63). Therefore, default options are not rules that bind the Agency; rather, the Agency may depart from them in evaluating the risks posed by a specific substance when it believes this to be appropriate. In keeping with EPA's goal of protecting public health and the environment, default assumptions are used to ensure that risk to chemicals is not underestimated (although defaults are not intended to overtly overestimate risk). See EPA, 2004, *An Examination of EPA Risk Assessment Principles and Practices,* EPA/100/B–04/001 available at: *http://www.epa.gov/osa/pdfs/ratf-final.pdf.*

effects. Because exposures to these pollutants cannot be included in a quantitative risk estimate, an understatement of risk for these pollutants at environmental exposure levels is possible. For a group of compounds that are either unspeciated or do not have reference values for every individual compound (*e.g.,* glycol ethers), we conservatively use the most protective reference value to estimate risk from individual compounds in the group of compounds.

Additionally, chronic reference values for several of the compounds included in this assessment are currently under the EPA IRIS review and revised assessments may determine that these pollutants are more or less potent than the current value. We may re-evaluate residual risks for the final rulemaking if these reviews are completed prior to our taking final action for this source category and a dose-response metric changes enough to indicate that the risk assessment supporting this notice may significantly understate human health risk.

e. Uncertainties in the Multipathway and Environmental Effects Assessment

We generally assume that when exposure levels are not anticipated to adversely affect human health, they also are not anticipated to adversely affect the environment. For each source category, we generally rely on the site-specific levels of PB–HAP emissions to determine whether a full assessment of the multipathway and environmental effects is necessary. Our screening methods use worst-case scenarios to determine whether multipathway impacts might be important. The results of such a process are biased high for the purpose of screening out potential impacts. Thus, when individual pollutants or facilities screen out, we are confident that the potential for multipathway impacts is negligible. On the other hand, when individual pollutants or facilities do not screen out, it does not mean that multipollutant impacts are significant, only that we cannot rule out that possibility.

*C. How did we consider the risk results in making decisions for this proposal?*

In evaluating and developing standards under section 112(f)(2), as discussed in section I.B of this preamble, we apply a two-step process to address residual risk. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [29] of approximately one in 10 thousand [*i.e.,* 100 in one million]'' (54 FR 38045). In the second step of the process, the EPA sets the standard at a level that provides an ample margin of safety ''in consideration of all health information, including the number of persons at risk levels higher than approximately one in one million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' (*Id.*)

In past residual risk actions, the EPA has presented and considered a number of human health risk metrics associated with emissions from the category under review, including: the MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum non-cancer HI; and the maximum acute non-cancer hazard (72 FR 25138, May 3, 2007; 71 FR 42724, July 27, 2006). In most recent proposals (75 FR 65068, October 21, 2010; 75 FR 80220, December 21, 2010; and 76 FR 29032, May 19, 2011), the EPA also presented and considered additional measures of health information, such as estimates of the risks associated with the maximum level of emissions which might be allowed by the current MACT standards (see, *e.g.,* 75 FR 65068, October 21, 2010 and 75 FR 80220, December 21, 2010). The EPA also discussed and considered risk estimation uncertainties. The EPA is providing this same type of information in support of the proposed actions described in this **Federal Register** notice.

The Agency is considering all available health information to inform our determinations of risk acceptability and ample margin of safety under CAA section 112(f). Specifically, as explained in the Benzene NESHAP, ''the first step judgment on acceptability cannot be reduced to any single factor'' and thus ''[t]he Administrator believes that the acceptability of risk under [previous] section 112 is best judged on the basis of a broad set of health risk measures and information'' (54 FR 38046). Similarly, with regard to making the ample margin of safety determination, as stated in the Benzene NESHAP ''[in the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors.'' *Id.*

The Agency acknowledges that the Benzene NESHAP provides flexibility regarding what factors the EPA might consider in making determinations and how these factors might be weighed for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that: ''The policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the Vinyl Chloride mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and, thereby, implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health' '' (54 FR at 38057).

Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explained that ''an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors'' (*Id.* at 38045). Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: ''* * * EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category'' (*Id.* at 38061).

[29] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

The EPA wishes to point out that certain health information has not been considered to date in making residual risk determinations. In assessing risks to populations in the vicinity of the facilities in each category, we present estimates of risk associated with HAP emissions from the source category alone (source category risk estimates), and generally we have also assessed risks due to HAP emissions from the entire facility at which the covered source category is located (facilitywide risk estimates). We have not, however, attempted to characterize the risks associated with all HAP emissions impacting the populations living near the sources in these categories. That is, at this time, we do not attempt to quantify those HAP risks that may be associated with emissions from other facilities that do not include the source categories in question, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in these categories.

The Agency understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. This is particularly important when assessing non-cancer risks, where pollutant-specific exposure health reference levels (*e.g.,* RfCs) are based on the assumption that thresholds exist for adverse health effects. For example, the Agency recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse non-cancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in increased risk of adverse non-cancer health effects. In May 2010, the EPA SAB advised us ''* * * that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [30]

Although we are interested in placing source category and facilitywide HAP risks in the context of total HAP risks from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. At this point, we believe that such estimates of total HAP risks will have significantly greater associated uncertainties than for the source category or facilitywide estimates, and hence would compound the uncertainty in any such comparison. This is because we have not conducted a detailed technical review of HAP emissions data for source categories and facilities that have not previously undergone an RTR review or are not currently undergoing such review. We are requesting comment on whether and how best to estimate and evaluate total HAP exposure in our assessments, and, in particular, on whether and how it might be appropriate to use information from the EPA's NATA to support such estimates. We are also seeking comment on how best to consider various types and scales of risk estimates when making our acceptability and ample margin of safety determinations under CAA section 112(f).

*D. How did we perform the technology review?*

Our technology review focused on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the 1999 NESHAP was promulgated. In cases where the technology review identified such developments, we conducted an analysis of the technical feasibility of applying these developments, along with the estimated impacts (costs, emissions reductions, risk reductions, etc.) of applying these developments. We then made decisions on whether it is necessary to propose amendments to the 1999 NESHAP to require any of the identified developments.

Based on our analyses of the data and information collected by the ICR and our general understanding of the industry and other available information on potential controls for this industry, we identified several potential developments in practices, processes, and control technologies. For the purpose of this exercise, we considered any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the 1999 NESHAP.
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the 1999 NESHAP) that could result in significant additional emissions reduction.
- Any work practice or operational procedure that was not identified or considered during development of the 1999 NESHAP.
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the 1999 NESHAP.

In addition to reviewing the practices, processes, or control technologies that were not considered at the time we developed the 1999 NESHAP, we reviewed a variety of data sources in our evaluation of whether there were additional practices, processes, or controls to consider for the Ferroalloys Production industry. Among the data sources we reviewed were the NESHAP for various industries that were promulgated after the 1999 NESHAP. We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes, and control technologies considered in these efforts that could possibly be applied to emissions sources in the Ferroalloys Production source category, as well as the costs, non-air impacts, and energy implications associated with the use of these technologies.

Additionally, we requested information from facilities regarding developments in practices, processes, or control technology. Finally, we reviewed other information sources, such as State or local permitting agency databases and industry-supported databases.

*E. What other issues are we addressing in this proposal?*

In addition to the analyses described above, we also reviewed other aspects of the MACT standards for possible revision as appropriate and necessary. Based on this review we have identified aspects of the MACT standards that we believe need revision. This includes proposing revisions to the startup, shutdown, and malfunction (SSM) provisions of the MACT rule in order to ensure that they are consistent with a recent court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (DC Cir. 2008). In addition, we are proposing various other changes to monitoring and testing requirements to ensure that this rule includes the measures needed to ensure continuous compliance at major sources subject to the revised NESHAP for the Ferroalloys Production source category.

[30] EPA's responses to this and all other key recommendations of the SAB's advisory on RTR risk assessment methodologies (which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf*) are outlined in a memo to this rulemaking docket from David Guinnup entitled, *EPA's Actions in Response to the Key Recommendations of the SAB Review of RTR Risk Assessment Methodologies.*

Our analyses and proposed decisions related to SSM and other testing and reporting requirements for this source category are presented in section IV.E of this preamble.

## IV. Analytical Results and Proposed Decisions

This section of the preamble provides the results of our review of the MACT rule including the RTR for the Ferroalloys Production source category and our proposed decisions concerning changes to the 1999 NESHAP.

### *A. What are the results of our analyses and proposed decisions regarding unregulated pollutants?*

In this section, we describe how we addressed unregulated emissions, including how we calculate MACT floors, how we account for variability in those floor calculations, and how we consider beyond the floor options. As described previously, the CAA section 112(d) requires the EPA to promulgate national technology-based emission standards for hazardous air pollutants (NESHAP) for listed source categories, including this source category. For more information on this analysis, see the *Draft MACT Floor Analysis for the Ferroalloys Production Source Category* which is available in the docket for this proposed action. Based on the ICR data that we collected, we conducted a MACT Floor analysis.

Section 112(d)(3)(B) of the CAA requires that the MACT standards for existing sources be at least as stringent as the average emissions limitation achieved by the best performing five sources (for which the Administrator has or could reasonably obtain emissions information) in a category with fewer than 30 sources. The Ferroalloy Production source category consists of fewer than 30 sources. Where, as here, there are five or fewer sources, we base the MACT floor limit on the average emissions limitation achieved by those sources for which we have data.

The EPA must exercise its judgment, based on an evaluation of the relevant factors and available data, to determine the level of emissions control that has been achieved by the best performing sources under variable conditions. It is recognized in the case law that the EPA may consider variability in estimating the degree of emissions reduction achieved by best-performing sources and in setting MACT floors. See *Mossville Envt'l Action Now* v. *EPA,* 370 F.3d 1232, 1241–42 (DC Cir 2004) (holding the EPA may consider emissions variability in estimating performance achieved by best-performing sources and may set the floor at a level that a best-performing source can expect to meet ''every day and under all operating conditions'').

With regard to data used to determine the MACT limits, we received detailed emissions data for multiple HAP from one furnace and one crushing system baghouse at each plant (collected at the outlet of the control device) based on an ICR sent to the two companies in 2010. We are soliciting additional emissions data for the operating furnaces and crushing system baghouses for which we do not have data and any other emissions sources at ferroalloys production facilities including available information on the quantity and composition of process fugitive emissions.

#### 1. Mercury Emissions

The raw materials used to produce ferroalloys contain various amounts of mercury, which is emitted during the smelting process. These mercury emissions are derived primarily from the manganese ore although there may be trace amounts in the coke or coal used in the smelting process. While some of the mercury that is in particulate or oxidized forms is captured by the particulate control devices, the more volatile elemental mercury is largely emitted to the atmosphere. We found that mercury emissions are emitted from the furnaces as measured during the ICR test program (estimated to be 540 pounds per year (lb/yr) at one plant and 140 lb/yr at the other plant). Pursuant to CAA section 112(d)(2) and 112(d)(3), we are proposing to revise the 1999 NESHAP to include emission limits for mercury.

As discussed above, the MACT floor limit is calculated based on the average performance of the units in each category plus an amount to account for these units' variability. To account for variability in the operation and emissions, the stack test data were used to calculate the average emissions and the 99 percent upper predictive limit (UPL) to derive the MACT floor limit. For more information on how we calculated the MACT floors and other emission limits, see the Ferroalloys Production MACT Floor Analysis document, which is available in the docket.

Using this method, the MACT floor (or 99 percent UPL) for exhaust mercury concentrations from existing furnaces is 80 μg/dscm at 2 percent carbon dioxide ($CO_2$). This MACT floor limit is higher than the actual emissions measured during the ICR performance tests at each plant. Therefore, we anticipate that both of the existing sources would be able to meet this limit without installing additional controls.

With regard to new sources, as described above, the MACT floor for new sources cannot be less stringent than the emissions performance that is achieved in practice by the best-controlled similar source. A variability analysis similar to that used for existing sources was then performed to calculate a 99 percent UPL using the three run test data from the top source. For this source category, we calculate that the UPL MACT floor limit for new sources is 16 μg/dscm at 2 percent $CO_2$. This limit is based on the performance of the best performing source.

The next step in establishing MACT standards is the beyond the floor analysis. In this step, we investigate other mechanisms for further reducing HAP emissions that are more stringent than the MACT floor level of control in order to ''require the maximum degree of reduction in emissions'' of HAP. In setting such standards, section 112(d)(2) requires the Agency to consider the cost of achieving the additional emission reductions, any non-air quality health and environmental impacts, and energy requirements. Historically, these factors have included factors such as solid waste impacts of a control, effects of emissions on bodies of water, as well as the energy impacts.

As described below, we considered beyond-the-floor control options to further reduce emissions of mercury. Because of our limited data set, we considered setting a MACT limit for existing sources based on the performance of the best performing source (*i.e.,* based upon the test data used to calculate the MACT floor for new sources) such that the MACT limit for existing sources would be the same as the UPL MACT limit for new sources (*i.e.,* 16 μg/dscm). Under this option, the best performing source would need no additional controls to meet the limit, since their current performance defines the new source limit. With regard to the other facility in the source category, as described below, we believe this limit could be achieved by the addition of an activated carbon injection system, which is a proven technology for mercury control. Compliance would be demonstrated by periodic performance testing and continuous parameter monitoring.

In evaluating a beyond the floor option, we evaluate, among other things, the costs of achieving additional emission reductions beyond the floor level of control. No facilities in the source category use add-on control devices or work practices to limit mercury emissions beyond what is

achieved as co-control of the emissions with the particulate matter control device. However, we identified both carbon bed technology and activated carbon injection as commercially available mercury emission reduction techniques. Carbon bed technology (which is one of the primary control devices used at Industrial Gold Production facilities in the U.S. to minimize mercury emissions, as described in the proposed rule for that category [31]) does not appear to be a viable technology to control the large volumes of airflow generated by the electric arc furnaces in the Ferroalloys Production source category. The carbon bed technology is applicable to gas streams with low volumes of airflow, and is characterized with relatively high pressure drops. Accordingly this technology is not used in industries with high volumes of airflow, such as industrial boilers and power plants.

In contrast, activated carbon injection has been used to control mercury emissions at various types of facilities that have large volumes of airflow including some coal-fired power plants, waste incinerators and cement kilns. Based on available information, activated carbon injection appears to be a technologically feasible control for mercury for these larger volume combustion sources. Mercury reductions of up to 90 or 95 percent have been reported at these other sources and should also be achievable at ferroalloys production facilities. Based on data and information on these mercury controls for other combustion sources (such as utility boilers, incinerators and cement kilns), and based on our experience with these controls, we conclude that activated carbon injection is a viable control technology for the Ferroalloys Production source category.

Activated carbon injection can be installed upstream or downstream of an existing particulate matter control device. In cases where a source is concerned about potential impacts of waste carbon on the source's waste stream and resulting disposal options or the ability to sell or reuse baghouse dust, the source can install the activated carbon injection downstream of the particulate matter control device with a separate polishing baghouse to collect the carbon. In other cases, the source can install the activated carbon injection upstream of the particulate matter control device and use the existing particulate control device to remove the carbon from the airstream.

We reviewed facility specific control options that included putting the mercury controls downstream of the existing furnace baghouse to avoid the potential issues with sale or reuse of baghouse dust associated with upstream controls. Under this scenario, the activated carbon injection system would be followed by a ''polishing'' baghouse to capture the activated carbon for disposal. In the case of the existing furnace scrubber, we assumed the source could put the activated carbon injection system upstream of the scrubber, the carbon would be captured by the scrubber and the resulting sludge treated according to the existing treatment process at the plant. Based on discussion [32] with a vendor and other control technology experts, we do not believe that the resulting carbon waste in either scenario would trigger waste disposal concerns. We request comment on these assumptions.

We estimate that under this beyond the floor option described above (*i.e.,* a proposed limit of 16 μg/dscm), that one facility would need to install additional controls such as activated carbon injection to meet this limit, and that this would achieve about 420 pounds of reduction per year in mercury emissions. The capital costs are estimated to be $1.7 million, annualized capital and operating costs to be $1.4 million, with an overall cost-effectiveness of $3,300 per pound. The general range of costs for mercury controls from other MACT rules has been about $1,250 to $55,200 per pound of mercury removed (76 FR 25075, May 3, 2011). The EPA requests information on other control technologies available to Ferroalloys Production manufacturers to reduce mercury emissions. Other controls might include process changes, substitution of materials, collection or enclosure systems, work practices, or combinations of such methods; which reduce the volume of mercury emissions from existing sources.

It is important to note that there is no bright line for determining cost-effectiveness. Each rulemaking is different and various factors must be considered. Nevertheless, the cost-effectiveness of mercury controls in this proposed rule for Ferroalloys Production is near the lower end of the range. Some of the factors we consider in determining the costs of control technologies under section 112(d)(2) include, but are not limited to the following: total capital costs; annual costs; and costs compared to total revenues (*e.g.,* costs to revenue ratios). Other factors besides cost are considered into our decision. For example, whether the standards significantly impact one or more small businesses, whether the controls would significantly impact production, and whether, and to what extent, the controls result in adverse impacts to other media (*e.g.,* hazardous waste issues). We propose that these mercury controls are feasible for the Ferroalloys Production source category from a technical standpoint and are cost effective. We are proposing a MACT standard for mercury emissions of 16 μg/dscm for both existing and new sources under the authority of sections 112(d)(2) and (d)(3). To meet this proposed limit, we have preliminarily determined that activated carbon injection is feasible to implement for the Ferroalloys Production source category from a technical standpoint and that control costs fall within the range of other mercury controls in other MACT rules. More information regarding how the MACT standards were calculated and the costs is provided in Ferroalloys Production MACT Floor and Cost Memos, which are available in the docket for this rulemaking.

We are requesting comment on the proposed standard of 16 μg/dscm for mercury. We also seek comments and information on our conclusion that activated carbon injection technology to meet the mercury emissions limit for this source category is technically and economically feasible. Moreover, we seek comments on the factors related to costs and economics (such as those described in the paragraph above) regarding the feasibility and costs of activated carbon injection for this industry. We also seek comments on other possible controls that could be effective to reduce mercury emissions beyond the floor, including the amount and cost of the resulting emissions reductions. Furthermore, we seek comment on whether work practices to minimize mercury emissions, such as switching to manganese ores with low mercury content, could be technically and economically feasible.

Moreover, we request comment on whether there is a basis to subcategorize manganese production operations for mercury. For example, is there a basis on which to subcategorize ferromanganese production and silicomanganese production processes? Although we are requesting comment on subcategorization, we do not believe that subcategorization would have any substantive effect on the resulting standards or the costs of controls since

[31] National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category. Proposed Rule (75 FR 22470);

[32] Conversation with D. Lipscomb, Albemarle. August 22, 2011.

there would be no change in the costs and feasibility of mercury controls evaluated for these sources.

We are proposing that any source installing activated carbon injection would be required to continuously monitor the carbon injection rate into the airstream being controlled. We request comment on the level of variability in the carbon injection rate that should be allowed, and what percent decrease in the rate should be considered significant.

We also propose that sources monitor the mercury content in the manganese ore. Specifically, we propose that the determination of a significant increase in mercury content would be that the 12-month rolling weighted average mercury concentration based on monthly sampling in the manganese ore increases by 10 percent or more compared to the baseline weighted average mercury concentration. If that limit is exceeded, the source would be required to readjust the carbon injection rate as specified in the source's monitoring plan or retest within 30 days if there is not a dedicated mercury control device. If a new ore is added, sampling would be required as well.

We request comment on this ore monitoring provision. We are especially interested in any data that would show the variability in mercury concentration between different ore samples from the same location and the variability of the types of ores used in manganese production. If ore type and mercury content are demonstrated to be stable, we might consider reducing the frequency of sampling/calculations to quarterly or less.

2. Polycyclic Aromatic Hydrocarbons (PAHs)

PAH emissions are products of incomplete combustion from the smelting operation, and a subset of the listed HAP POM. Some of these emissions are likely to be in particulate form, but a significant portion is expected to be in a gaseous form. Therefore, the existing particulate matter control devices only achieve partial control of these compounds. No existing facilities in the source category control PAH or use work practices to limit emissions of PAH emissions specifically. However, under today's proposal, these pollutants would be controlled with the same activated carbon injection technology as mercury. Because of this, emission reductions could be achieved via co-control at no additional costs. Pursuant to CAA section 112(d)(2) and 112(d)(3), we are proposing to revise the 1999 NESHAP to include an emission limit for PAH.

We have stack test data from only one furnace for PAH emissions. As such, the MACT floor would be based on the performance level achieved at that furnace (*i.e.,* the average emissions of that furnace plus an amount to account for variability). Based on these data and applying the 99 percent UPL, we calculate that the MACT floor limit for PAHs would be 887 μg/dscm. We also evaluated control performance that could be achieved via co-control of mercury emissions with activated carbon injection as a beyond-the-floor option. Based on information from carbon vendors, an activated carbon system that is designed to achieve a 90 percent reduction in mercury emissions (which we expect would be applied to meet the proposed mercury standard discussed above) should also achieve a high degree of reduction in PAH with no additional costs. Assuming a 90 percent reduction from the calculated 99 percent UPL of 887 μg/dscm, the resulting limit would be 89 μg/dscm. Thus, a proposed limit for PAHs of 89 μg/dscm could be achieved with the same controls needed for mercury with no additional costs.

Therefore, pursuant to CAA sections 112(d)(2) and (d)(3), we are proposing to revise the 1999 NESHAP to include an emission limit for PAH of 89 μg/dscm for new and existing sources.

3. Hydrochloric acid

Hydrochloric acid (HCl) is a product of combustion, and the level of emissions is dictated by the chlorine content of the coal or coke used as a reducing agent in the smelting process. Based on test data from the ICR, we estimate that the two facilities in this source category emit 6 to 11 tpy of HCl. While these levels of emissions are nontrivial, they are relatively low compared to some other types of combustion sources. The primary reason for this is that manganese producers use coke instead of coal as the primary reducing agent in the smelting operation. Because coke is a refined product, much of the original chlorine content in the coal is removed in the coking process, which greatly reduces potential emissions. Second, one of the five furnaces at these plants is equipped with a scrubber, which provides co-control of particulate matter and HCl emissions. Notwithstanding the relatively low HCl emissions from facilities in this source category, section 112(d) requires us to set MACT for HAP emitted from the source category. Pursuant to CAA section 112(d)(2) and 112(d)(3), we are proposing to revise the 1999 NESHAP to include emission limits for HCl.

As discussed above, the MACT floor limit is calculated based on the average performance of the units in each category plus an amount to account for these units' variability. To account for variability in the operation and emissions, the stack test data were used to calculate the average emissions and the 99 percent UPL to derive the MACT floor limit. However, a number (50 percent) of the individual data points were reported as below the applicable test detection limits.[33] The following discussion describes how we handle such data in our MACT calculations. Also, as described below, we request comment on how this uncertainty might influence establishing an emission limit instead of a work practice standard.

Test method measurement imprecision is a contributor to the variability of a set of emissions data. One element is associated with method detection capabilities and a second is a function of the measurement value. Measurement imprecision is proportionally highest for values measured below or near a method's detection level and proportionally lower for values measured above the method detection level.

The probability procedures applied in calculating the MACT floor or beyond the floor emissions limit inherently and reasonably account for emissions data variability including measurement imprecision when the database represents multiple tests from multiple emissions units for which all of the data are measured significantly above the method detection level. This is less true when the database includes some emissions occurring below method detection capabilities that are reported as the method detection level values.

The EPA's guidance to facilities for reporting pollutant emissions in response to the ICR data collection specified the criteria for determining test-specific method detection levels. Those criteria ensure that there is only about a 1 percent probability of an error in deciding that the pollutant measured at the method detection level is present when in fact it was absent. Such a probability is also called a false positive or an alpha, Type I, error. Because of sample and emissions matrix effects, laboratory techniques, sample size, and other factors, method detection levels normally vary from test to test for any specific test method and pollutant measurement. The expected

[33] We conducted this analysis for all measured pollutant according to the following method when non detects were reported. However only the hydrochloric acid and formaldehyde data needed a detection limit correction to adequately account for variability, as described below.

measurement imprecision is 40 to 50 percent or greater at levels measured at the method detection level or less. The expected measurement imprecision decreases to 10 to 15 percent for values measured at a level about three times the method detection level or greater.[34]

Also in accordance with our guidance, source owners identified emissions data which were measured below the method detection level and reported those values as equal to the method detection level as determined for that test. An effect of reporting data in this manner is that the resulting database is somewhat truncated at the lower end of the measurement range (*i.e.*, no values reported below the test-specific method detection level). A MACT floor or beyond the floor emissions limit based on a truncated database or otherwise including values measured near the method detection level may not adequately account for measurement imprecision contribution to the data variability.

We applied the following procedures to account for the effect of measurement imprecision associated with a database that includes method detection level data. The following process also addresses the concerns associated with use of a small data set, such as the Ferroalloys Production data set for HCl. As a first step, we reviewed an HCl emissions data set for the industrial boilers rule, which represents several hundred emissions tests used in the floor calculations (*i.e.*, best performers) for the boilers rule to determine typical method detection levels. We have data from multiple industrial boilers tests and used those data to confirm that method detection levels that testers reported were as good as or better (*i.e.*, lower) than the values reported in the method. We presume that data for the best performing units also reflect the capabilities of high quality testing companies and laboratories. Further, the method detection levels calculated from larger data sets are more representative of the inherent measurement variability both within and between testing companies than the limited Ferroalloys Production dataset. We believe that emissions tests conducted with these methods for most combustion operations (*e.g.*, fossil fuel, biomass, and waste fired units; brick and clay kilns; Portland cement kilns), including ferroalloys production, should produce method detection levels very similar to the level of 60 μg/dscm that is the result of this review.

The second step in the process was to calculate three times the RDL and compare that value to the calculated MACT floor or beyond the floor emissions limit. We use the multiplication factor of three to approximate a 99 percent upper confidence interval for a data set of seven or more values. If three times the RDL was less than the calculated MACT floor emissions limit calculated from the UPL, we would conclude that measurement variability was adequately addressed. The calculated MACT floor or beyond the floor emissions limit would need no adjustment. If, on the other hand, the value equal to three times the RDL was greater than the UPL, we would conclude that the calculated MACT floor or beyond the floor emissions limit does not account entirely for measurement variability. If indicated, we substituted the value equal to three times the RDL to apply as the adjusted MACT floor or beyond the floor emissions limit. This adjusted value would ensure measurement variability is adequately addressed in the MACT floor or the beyond the floor emissions limit.

For HCl, three times the RDL was less than the calculated 99 percent UPL for exhaust HCl concentration from existing furnaces. Thus, for existing sources, the MACT floor for HCl is set at the UPL, or 809 μg/dscm corrected to 2 percent $CO_2$.

Consistent with CAA section 112(d)(3), the MACT floor for new sources cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The 99 percent UPL calculated for HCl based on the best performing source is less stringent than the MACT floor for HCl at existing furnaces. We determined that the use of the best performing source UPL is not appropriate in this situation because the high variability and small data pool would result in a new source MACT floor limit that is less stringent than the limit based on the UPL calculated from the larger data pool for existing sources. Given that the 99 percent UPL for new sources is higher than the 99 percent UPL for existing sources, we determined that the MACT limit for new sources should be equal to the MACT limit for existing sources.

We then considered a beyond-the-floor option to further reduce emissions of HCl at existing sources based on application of additional add-on control devices, such as lime injection, but their use is not indicated given the high costs of installing and operating such controls. There is also concern that use of this technology could prevent the current practice of reusing or selling baghouse dust and the resulting waste reduction benefits. See the Draft MACT Floor Analysis for the Ferroalloys Production Source Category in the docket for more discussion of this topic.

Therefore, pursuant to CAA sections 112(d)(2) and 112(d)(3), we are proposing to revise the 1999 NESHAP to include emission limits for new and existing sources for HCl of 809 μg/dscm. At this level, we do not anticipate that either source would be required to install controls to meet the limits. For more information on how these limits were derived, see the Draft MACT Floor Analysis for the Ferroalloys Production Source Category. As described above, there are some measurements (*i.e.*, 50 percent) reported as below the method detection level. Because of the potential uncertainty in basing a limit partially on non-detect values, we considered the possibility of proposing work practice standards such as a limit on the amount of coal (the primary source of chlorine in the raw materials) in lieu of numerical emission limits. We request comment on whether this or other work practices might be appropriate.

4. Formaldehyde

Formaldehyde emissions are also products of incomplete combustion from the smelting operation. Based on test data from the ICR, we estimate that the two facilities in this source category emit approximately 2 tpy of formaldehyde. Pursuant to CAA section 112(d)(2) and 112(d)(3), we are proposing to revise the 1999 NESHAP to include emission limits for formaldehyde.

The measured average formaldehyde emissions ranged from 57 to 78 μg/dscm corrected to 2 percent $CO_2$. Because the formaldehyde emissions data included some data points (50 percent) reported as below the detection limit, we employed a version of the methodology used for HCl to determine the MACT floor. However, in this case we lack the underlying large data set of formaldehyde method detection limits that we had for HCl method detection limits. In this case, the first step was to define a method detection level that is representative of the data used in defining the best performers for the inclusive source category (*i.e.*, combined data for all subcategories). We identified all of the available reported pollutant specific method detection levels and calculated the arithmetic mean value. We deemed the resulting mean of the method detection levels as the (RDL). Three times the RDL was

[34] American Society of Mechanical Engineers, Reference Method Accuracy and Precision (ReMAP): Phase 1, Precision of Manual Stack Emission Measurements, CRTD Vol. 60, February 2001.

greater than the calculated 99 percent UPL for exhaust formaldehyde concentrations from existing furnaces, resulting in a MACT floor of three times the RDL, or 201 μg/dscm at 2 percent $CO_2$. Based on available data, all of the existing sources could meet this limit without installing additional controls.

Due to the high variability in the data pool, the 99 percent UPL for the best-performing source is less stringent than the existing source MACT floor. Therefore, pursuant to CAA section 112(d)(2) and 112(d)(3), we are proposing to revise the 1999 NESHAP to include an emission limit for formaldehyde for new and existing sources of 201 μg/dscm based on the MACT floor calculation. We have not identified any appropriate beyond-the-floor control technology options specifically for formaldehyde. We recognize the potential for some co-control of formaldehyde emissions that would be achieved by using activated carbon injection to control mercury emissions, but we were unable to quantify those reductions. More information regarding how the MACT limits were calculated and the costs is provided in Ferroalloys Production MACT Floor and Cost Memos, which are available in the docket for this rulemaking. Finally, because of the potential uncertainty in basing a limit partially on non-detect values, we considered the possibility of proposing work practice standards. We request comment on whether there are any work practices that might be appropriate.

*B. What are the results of the risk assessment and analyses?*

As described above, for the Ferroalloys Production source category, we conducted an inhalation risk assessment for all HAP emitted. We also conducted multipathway screening analyses for mercury and POM. Details of the risk assessment and additional analyses can be found in the residual risk documentation referenced in section III.B of this preamble, which is available in the docket for this action. The Agency considered the available health information—the MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum non-cancer HI; the maximum worst-case acute non-cancer HQ; the extent of non-cancer risks; the potential for adverse environmental effects; and distribution of risks in the exposed population (54 FR 38044, September 14, 1989) in developing the proposed CAA section 112(f)(2) standards for the Ferroalloys Production source category.

1. Inhalation Risk Assessment Results

Table 5 of this preamble provides an overall summary of the results of the inhalation risk assessment.

TABLE 5—FERROALLOYS PRODUCTION INHALATION RISK ASSESSMENT RESULTS

| Maximum individual cancer risk (in 1 million) [1] | | Estimated population at increased risk of cancer ≥ 1-in-1 million | Estimated annual cancer incidence (cases per year) | Maximum chronic non-cancer TOSHI [3] | | Maximum screening acute non-cancer HQ [4] |
|---|---|---|---|---|---|---|
| Based on actual emissions level [2] | Based on allowable emissions level | | | Based on actual emissions level | Based on allowable emissions level | |
| 80 | 100 | 26,000 | 0.002 | 90 | 200 | 10 |

[1] Estimated maximum individual excess lifetime cancer risk due to HAP emissions from the source category.

[2] Based on the consistent views of major scientific bodies (*i.e.*, NTP in their 12th Report on Carcinogens, IARC, and other international agencies) that consider all nickel compounds to be carcinogenic, we currently consider all nickel compounds to have the potential of being as carcinogenic as nickel subsulfide. To implement this approach we apply the nickel subsulfide IRIS URE without a factor to reflect the assumption that 100 percent of the total mass of nickel may be carcinogenic. The EPA also considers it reasonable to use a value that is 50 percent of the IRIS URE for nickel subsulfide for providing an estimate of the lower end of a plausible range of cancer potency values for different mixtures of nickel compounds. If the lower end of the nickel URE range is used, the maximum individual lifetime cancer risk based on actual emissions would be 50 in 1 million. The allowable cancer risk would remain 100 in a million because at one facility nickel is not the primary cancer driver. The estimated annual cancer incidence would also be reduced, but due to our presentation of incidence to one significant figure, remains 0.002. Estimated population values are not scalable with the nickel URE range, but would be lower using the lower value.

[3] Maximum TOSHI. The target organ with the highest TOSHI for the Ferroalloys Production source category is the central nervous system.

[4] The maximum off-site HQ acute value of 10 is driven by emissions of nickel. See section III.B of this preamble for explanation of acute dose-response values.

The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of current actual emissions, the current maximum individual lifetime cancer risk posed by these two facilities could be up to 80 in one million (50 in one million with the lower nickel URE value), with process fugitive emissions (from the furnace, crushing operation, and casting) of nickel, chromium and arsenic as major contributors to the risk. The total estimated cancer incidence from this source category based on actual emission levels is 0.002 excess cancer cases per year or one case in every 500 years, with emissions of nickel, chromium and arsenic contributing 36 percent, 24 percent and 24 percent respectively, to this cancer incidence. In addition, we note that approximately 1,100 people are estimated to have cancer risks greater than 10 in one million, and approximately 26,000 people are estimated to have risks greater than one in one million as a result of emissions from these two facilities. When considering the risks associated with MACT-allowable emissions, both facilities have allowable risks of 100 in one million, driven by nickel, chromium VI, and arsenic at one facility (which would have an allowable cancer risk of 70 in one million when using the lower nickel URE value) and chromium VI and arsenic at the other facility (which would have an allowable cancer risk of 100 in one million when using the lower nickel URE value).

The maximum modeled chronic non-cancer TOSHI value for the source category based on actual emissions could be up to 90 with emissions of manganese from process fugitives contributing greater than 90 percent of those impacts. A TOSHI of 90 means that the modeled long-term average air concentration of manganese at that location is about 4.5 μg/m$^3$, or 90 times above the RfC (*i.e.*, 0.05 μg/m$^3$). Approximately 28,000 people are exposed to TOSHI levels above 1 and approximately 30 people are exposed to a TOSHI greater than 10. When considering MACT-allowable emissions, which did not adjust the fugitive emissions, the maximum chronic non-cancer TOSHI value could be up to 200.

Our screening analysis for worst-case acute impacts indicates the potential for two pollutants, nickel and arsenic, to exceed an HQ value of 1, with a potential maximum HQ up to 10 for nickel and 9 for arsenic based on acute REL values for each substance. There

are no AEGL, ERPG, or short-term occupational values for these pollutants to use as comparison to acute REL values, as has been done in other RTR actions. In addition, there are no reference values available to assess any potential risks from acute exposure to manganese. These acute result values were based on hourly emissions estimates and a review of the facility boundaries to make sure the estimated impacts were off facility property. Refer to Appendix 1 of the Risk Assessment document in the docket for a detailed description of how the hourly emissions were developed for this source category. These results suggest there may be potential for acute impacts of concern from the emissions of nickel and arsenic from the two facilities in this category. In characterizing the potential for acute noncancer impacts of concern, it is important to remember the upward bias of these exposure estimates (*e.g.*, worst-case meteorology coinciding with a person located at the point of maximum concentration during the hour) and to consider the results along with the uncertainties related to the emissions estimates and the screening methodology.

2. Multipathway Risk Screening and Results

The PB–HAP emitted by facilities in this category include mercury, POM (as benzo(a)pyrene toxicity equivalents, or TEQ), and lead. To identify potential multipathway health risks from PB–HAP other than lead, we first performed a screening analysis that compared emissions of other PB–HAP emitted from the Ferroalloys Production source category to emission threshold values. The two facilities in the source category reported emissions of mercury and POM, and both of them had baseline emission rates greater than the screening emission threshold values for the pollutants indicating that there may be potential multipathway impacts of concern due to emissions of these pollutants from these two facilities.

Since the two PB–HAP did not screen out during our initial screening analysis, we refined our analysis somewhat with some additional site-specific information to develop an ''intermediate screen,'' which is a more realistic analysis but still considered a screening analysis. (See Appendix 5 of the Risk Assessment document in the docket for more information about this intermediate screen.) The additional site-specific information included land use around the facilities, the location of fishable lakes, and local wind direction and speed. The result of this analysis was the development of site-specific emission screening thresholds for POM and mercury. Based on this intermediate screening analysis, neither facility screened out, meaning that we cannot rule out the potential for multipathway impacts of concern due to emissions of these pollutants from these two facilities. We were unable to obtain the data necessary to conduct a fully refined assessment of multipathway risks from these two facilities.

In evaluating the potential for multipathway effects from emissions of lead, modeled maximum annual lead concentrations were compared to the National Ambient Air Quality Standards (NAAQS) for lead (0.15 $\mu g/m^3$). Results of this analysis estimate that the NAAQS for lead could be exceeded at one of the two facilities, largely due to process fugitive emissions. This analysis estimates that the annual lead concentrations could be as high as two times the NAAQS for lead, and if the maximum 3-month rolling average concentrations were used, the result could be even greater concentrations above the NAAQS. However, this additional analysis was not conducted because, as shown below (in section IV.C.2), the maximum annual lead concentration after the proposed controls are applied is significantly below the NAAQS, with a value of 0.02 $\mu g/m^3$.

3. Facilitywide Risk Assessment Results

For both facilities in this source category, there are no other significant HAP emissions sources present beyond those included in the source category. All significant HAP sources have been included in the source category risk analysis. Therefore, we conclude that the facilitywide risk is essentially the same as the source category risk and that no separate facilitywide analysis is necessary.

*C. What are our proposed decisions based on risk acceptability and ample margin of safety?*

1. Risk Acceptability

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the MIR; the number of persons in various cancer and noncancer risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer HQ; the extent of noncancer risks; the potential for adverse environmental effects; distribution of cancer and noncancer risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

Based on the baseline inhalation risk assessment, we estimate that the cancer risks to the individual most exposed could be up to 80 in one million (50 in one million when using the lower nickel URE value) due to actual emissions of arsenic, chromium and nickel from process fugitives and up to 100 in one million due to MACT-allowable emissions, mainly due to chromium, arsenic and nickel stack emissions. (There is no change in the allowable cancer risk estimate when using the lower nickel URE value.) We estimate that the incidence of cancer based on actual emissions is 0.002 excess cancer cases per year, or 1 case every 500 years, and that about 26,000 people face a cancer risk greater than one in one million due to HAP emissions from this source category. The chronic noncancer TOSHI could be up to 90 due to actual emissions of manganese from process fugitives and up to 200 due to MACT-allowable emissions of manganese from process fugitives. We estimate that about 28,000 people face a TOSHI level greater than 1 and approximately 30 people face a TOSHI greater than 10 due to emissions from this source category.

With respect to potential acute non-cancer health risks, we estimate that, based on our refined analysis, the worst-case HQ value could exceed an HQ value of 1 for two pollutants, nickel and arsenic, with a potential maximum HQ up to 10 for nickel and 9 for arsenic. This indicates a potential acute concern relative to the baseline emissions of these two pollutants based on the REL. In characterizing the potential for acute noncancer impacts of concern, it is important to remember the upward bias of these exposure estimates and to consider the results along with the uncertainties related to the emissions estimates and screening methodology. In the case of ferroalloys, the acute emissions estimates were based on actual data from the ICR (*i.e.*, there was not an acute emissions adjustment factor). Our assessment also indicates the potential for multipathway impacts of concern based on the intermediate screening assessment due to baseline emissions of mercury and POM. Data were unavailable to conduct a fully refined assessment of multipathway risks from these two facilities.

The risk assessment for this source category was based on facility-specific stack-test data and emissions estimates, giving us a generally high degree of confidence in the results. We applied the two-step analysis set out in the Benzene NESHAP to assess emissions from this source category. Considering all of the above information, we are proposing that the risks are

unacceptable, both for the actual emissions scenario and for the MACT-allowable emissions scenario.

The proposed determination that risks are unacceptable for this source category is primarily based on the fact that the maximum chronic noncancer HI values (90 based on actual emissions, 200 based on allowable, both dominated by manganese emissions) are higher than 1 (an HI exposure level of 1 is generally considered to be without appreciable risk of adverse health effects). The fact that 28,000 people are estimated to have exposures greater than an HI of 1 (based on actual emissions) also weighs in this proposed determination. The fact that maximum individual cancer risks are above 1 in a million also contributes to our determination of unacceptability, but to a lesser extent. While the estimated maximum individual cancer risks would, by themselves, not generally lead us to a determination that risks are unacceptable, the fact that they occur along with the chronic noncancer TOSHI greater than 1 (approximately 28,000 people are exposed to TOSHI levels above 1 and approximately 30 people are exposed to a TOSHI greater than 10) adds to our concern about these exposures, and further supports our proposed determination that risks are unacceptable. The total estimated cancer incidence (0.002 cases per year) is not very high, and this fact did not weigh significantly in our proposed determination of unacceptable risk. However, in the past EPA has weighed an estimated cancer incidence of 0.002 cases per year heavily in a determination of acceptable risk. EPA notes that there were no non-cancer concerns in these previous instances. We further note that, while our screening for potential acute and multi-pathway impacts of concern from the 2 sources in the category did identify some potential concerns for a few HAPs, these screening results did not weigh heavily in our proposed determination that risks are unacceptable.

Given that chronic noncancer risks associated with manganese emissions are the primary determinant of unacceptable risks, we provide here a brief discussion of the EPA's RfC associated with the inhalation of manganese and our confidence in the principal studies supporting the development of that RfC for context. The RfC is the level below which there is not likely to be appreciable risk of deleterious effects; however, the EPA cannot state at what exposure level there will be an appreciable risk of deleterious effects. In the case of manganese, the effect of concern was a decrease in visual reaction time in adults who were occupationally exposed to manganese. The effects were seen at a dose adjusted value of 0.05 mg/m$^3$ and then to derive the RfC, the EPA divided this value by 1000 to account for uncertainties related to sensitive individuals (10×), use of the lowest exposure level at which effects were observed in lieu of a level without effects (10×) and due to database limitations (10×). We note that the concentration reflected in the maximum TOSHI of 90 (0.0045 mg/m$^3$) is approximately a factor of 10 lower than the 0.05 mg/m$^3$ dose adjusted effect level in an adult male work force and used in the derivation of the RfC (0.00005 mg/m$^3$). The EPA has ''medium confidence'' (as used and described in the IRIS database) in the RfC value of 0.00005 mg/m$^3$. The confidence level reflects the overall level of uncertainty in the principle studies, which were based on human occupational studies, and the database.

Overall confidence in the principal studies (Roels *et al.*, 1987, 1992) is ''medium''. Neither of the principal studies identified a no observed adverse effect level (NOAEL) for neurobehavioral effects, nor did either study directly measure particle size or provide information on the particle size distribution. The 1992 study by Roels *et al.* did provide respirable and total dust measurements, but the 1987 study measured only total dust.[35] These limitations of the studies are mitigated by the fact that the principal studies found similar indications of neurobehavioral dysfunction, which was consistent with the results of other human studies. In addition, the 1992 Roels *et al.* study provides sufficient information to establish individual integrated exposures; the 1987 Roels *et al.* study did not.

Confidence in the database on manganese health effects is ''medium''. The duration of exposure was relatively limited and the workers were relatively young in all of the principal and supporting studies. These temporal limitations raise concerns that longer durations of exposure and/or interactions with aging might result in the detection of effects at lower concentrations, as suggested by results from other studies. In addition, the studies, with the exception of the 1992 Roels *et al.* study in which manganese exposure was limited to manganese oxide, did not specify the species of manganese to which workers were exposed. It is not clear whether certain compounds or oxidation states of manganese are more toxic than others. Although the primary neurotoxicological effects of exposure to airborne manganese have been qualitatively well characterized by the general consistency of effects across studies, the exposure-effect relationship remains to be well quantified, and a no-effect level for neurotoxicity has not been identified in any of these studies thus far. Finally, the effects of manganese on development and reproduction have not been studied adequately. See the full IRIS summary for manganese for more information (IRIS, Manganese, available at: *www.epa.gov/iris/subst/0373.htm*).

As noted in the 1989 Benzene NESHAP, the Agency weighs multiple risk factors in making a determination of acceptable or unacceptable risk, and notes that acceptability cannot be reduced to any single factor. In applying the balancing factors to this action, EPA considered a wide range of data including the MIR; the number of persons in various cancer and noncancer risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer HQ; the extent of noncancer risks; the potential for adverse environmental effects; distribution of cancer and noncancer risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

In summary, the MIR was 80 in a million based on actual emissions and 100 in one million based on allowable emissions; the total estimated cancer incidence was 0.002 cases per year (or 1 case in every 500 years); and approximately 30 people could be exposed at a TOSHI greater than 10 while approximately 28,000 could be exposed at a TOSHI greater than 1. Since the RfC is 1000 fold below the lowest level at which neurological effects were seen, the maximum TOSHI of 90 (or 200 for allowable risks) is still below the effect level used to derive the RfC and there is uncertainty as to exactly what level of exposure above the RfC will lead to appreciable risk of adverse effects. The population from which the effect level was derived was an adult male worker population, and that this population does not necessarily represent the general population. We note that the concentration reflected in the maximum TOSHI of 90 (0.0045 mg/m$^3$) is approximately a factor of 10 lower than the 0.05 mg/m$^3$ dose adjusted effect level in an adult male work force which was used in the derivation of the RfC.

[35] ''Total and respirable dust concentrations were highly correlated, with the Mn content of the respirable fraction representing on average 25% of the manganese content in the total dust. The RfC is based on the respirable fraction.

Based on our assessment of the information, we are proposing that the risks are unacceptable. We solicit comment on all aspects of this proposed determination. Specifically, we solicit any information (and supporting data) that would further inform our proposed decision.

We also solicit comment on whether an alternative balancing of all the same factors including the weights afforded to individual factors discussed above and their associated uncertainties could lead to a different decision regarding risks. EPA also solicits any information (and supporting data) that would further inform this alternative approach.

Under the two-step Benzene NESHAP approach, we are required under CAA section 112(f)(2)(A) to make a determination as to what controls are needed to achieve an ample margin of safety for the source category after we make a determination on risk acceptability. The discussion of the controls needed to achieve an ample margin of safety in section IV.C.3 addresses both what would be needed if we find risks are unacceptable as well as what would be needed if we find that risks are acceptable.

2. Proposed Controls To Address Risks

We conducted an assessment to estimate the risks from the two facilities in the source category based on a post-control scenario reflecting the proposed requirements described above to address unregulated HAP (section IV.A) and the proposed controls described below. Details are provided in the Draft Risk Assessment report which is available in the docket for this action.

a. Allowable Stack Emissions

In order to ensure that the risks associated with this source category are acceptable, we evaluated the potential to reduce MACT-allowable stack emissions, which had driven the cancer MIR based on allowable emissions to 100 in a million, primarily due to allowable stack emissions of arsenic, nickel and chromium, and contributed significantly to the chronic noncancer TOSHI (based on allowable emissions) of 200, primarily due to allowable stack emissions of manganese. Our analysis determined that we could lower the existing particulate matter emission limits by approximately 50 percent for furnace stack emissions, by 80 percent for crushing and screening stack emissions and by 98 percent for the metal oxygen refining process. After the implementation of these tighter PM stack limits, the estimated cancer MIR for the source category based on allowable emissions would become 80 in one million and the TOSHI would be about 90.

For the reasons described above, under the authority of CAA section 112(f)(2), we propose to set particulate matter emission limits for the stacks at the following levels: 9.3 mg/dscm corrected to 2 percent $CO_2$ for new or reconstructed electric arc furnaces, 24 mg/dscm corrected to 2 percent $CO_2$ for existing electric arc furnaces, 1.5 mg/dscm corrected to 2 percent $CO_2$ for any new, reconstructed or existing MOR process, and 13 mg/dscm for any new, reconstructed or existing crushing and screening equipment. We believe sources can achieve these limits with existing controls. These new emissions limits will reduce potential risks due to allowable emissions from the stacks and prevent backsliding. We propose that compliance for existing sources will be demonstrated by annual stack testing and installation and operation of bag leak detection systems for both new and existing sources.

b. Process Fugitive Emissions Sources

Process fugitive sources are partially controlled by the existing MACT via a shop building opacity standard; however, that standard was only intended to address tapping process fugitives generated under ''normal'' tapping process operating conditions. Casting and crushing and screening process fugitives in the furnace building were not included. Under the authority of section 112(d)(2) of the Act, which allows the use of measures to enclose systems or processes to eliminate emissions and measures to collect, capture or treat such pollutants when released from a process, stack, storage, or fugitive emissions point, we evaluated several options to achieve improved emissions capture. We developed several control scenarios to assess options to improve/add local ventilation and associated control (*e.g.,* improve tapping capture, install capture and control on casting operations), but we concluded that these were all ineffective in significantly reducing emissions and risks. As part of the technology review process, we identified a furnace building ventilation system at a non-manganese producer of ferroalloys. We evaluated an option based on this furnace building ventilation system, which involves enclosing the furnace building(s) and evacuating the emissions to a control device(s). Based on our assessment we conclude that this option would reduce process fugitive emissions by about 98 percent and reduce the maximum noncancer TOSHI to about 2. A TOSHI of 2 means that the modeled long-term concentration of manganese at that location would be about 0.1 $\mu g/m^3$ (*i.e.,* about 2 times higher than the RfC). These controls would also significantly reduce the emissions of arsenic, chromium and nickel and therefore significantly reduce the cancer risks. These reductions would result in acceptable risk levels. Therefore, under the authority of CAA section 112(f), we are proposing such an approach, whereby the furnace buildings must be enclosed and process fugitive emissions would need to be collected under negative pressure at the ridge vents of the shop building and ducted to a control device.

We are proposing that the PM emissions limit (as a surrogate for particulate metal HAP) at the control device would be the same as it is for the furnace stacks (24 mg/dscm). This would allow sources the option to duct some or all process fugitive emissions to an existing furnace control device if it has excess capacity. If the existing control device at the facility does not have sufficient excess capacity to handle the captured emissions, the facility would have to install additional controls capable of complying with the proposed emission limit.

The source would also have to monitor building opacity, prepare and operate according to a process fugitives ventilation plan and conduct annual performance testing of the building ventilation control device to demonstrate compliance with the proposed standards. Baghouses would be required to be equipped with BLDS. We also propose that facilities would need to continue the practices to minimize outdoor fugitive dust emissions that are required by the 1999 MACT rule which includes implementing measures specified in their outdoor fugitive dust control plans as approved by the Administrator.

However, recognizing that there may be other control measures that could achieve equivalent emissions reductions that we have not yet identified, and to provide some flexibility for facilities to determine the best approach to reduce their emissions, we are also proposing an equivalent alternative compliance approach. Under this alternative approach, we propose that facilities would still need to continue the work practices to minimize outdoor fugitive dust emissions that are required by the 1999 MACT rule which includes implementing measures specified in their outdoor fugitive dust control plans as approved by the Administrator. However, in lieu of building the full enclosure and capture and evacuation system described above to control

process fugitive emissions, we are proposing that facilities can design and implement an equivalent alternative approach (*e.g.,* local capture, controls, and work practices) to address the risks associated with those process fugitive emissions. Compliance would be demonstrated by ensuring facilities apply the equivalent alternative approach to control process fugitive emissions, continue the work practices to minimize outdoor fugitive dust emissions, and also conduct fenceline monitoring to demonstrate that the ambient concentration of manganese at their facility boundary is no more than 0.1 μg/m$^3$ on a 60-day rolling average, as described below.

Specifically, we propose to require that sources seeking to use this alternative prepare and submit for the Administrator's approval a written plan describing and explaining the equivalent alternative approach that they propose to apply and a proposed compliance monitoring network that must consist of at least two monitors located at or near the facility boundary, and in locations expected to have the highest concentrations of manganese, and the procedures for sampling, sample handling and custody, sample analysis, quality assurance, and recordkeeping procedures. The purpose of the ambient air monitoring network would be to ensure that manganese concentrations in air near the facility boundaries remain at or below 0.1 μg/m$^3$ based on 10-sample rolling averages, with samples being collected every 6 days (*i.e.,* 60-day rolling averages). The monitoring plan must include a minimum of two monitoring sites that are placed in locations that are most likely to capture measurements of the maximum concentrations at or near the facility boundaries. For example, at least one monitor must be placed in the predominant downwind direction from main emissions sources based on historical weather patterns in the area. This standard for manganese emissions would be a surrogate for all particulate HAP metals (including arsenic, nickel and chromium) since they are emitted by the same processes and controlled with the same devices and measures. We propose to set this alternative limit using manganese as a surrogate for metal HAP because manganese is the primary HAP metal emitted from this source category. We considered the feasibility of using PM as a surrogate, but developing a reliable relationship between fenceline manganese concentration and filterable PM concentration is almost impossible. We request comment on the use of manganese as a surrogate for HAP metals in the alternative approach.

This alternative regulatory requirement would provide flexibility to facilities in determining the within-facility emission sources that should be captured and vented to a control device that are most effective for reducing process fugitive emissions at their facilities. However, any facility considering this alternative approach would need to demonstrate that they can be expected to achieve the fenceline limitation with the proposed alternative approach and obtain approval from the Administrator. This is especially important for facilities with a history of elevated ambient manganese concentrations based on monitoring by state regulatory agencies or the EPA, or any facility that has been confirmed as the main contributor to elevated monitored manganese concentrations in a particular area. Nevertheless, we are seeking comments on this proposed alternative requirement, including the controls and practices that can achieve the equivalent level of reductions, the averaging time for monitoring, and whether two monitors would be sufficient or if more monitors may be warranted.

We propose to set the fenceline concentration level at 0.1 μg/m$^3$ to reflect the equivalent level of emissions control that we estimate will be achieved with the requirement to enclose the furnace building(s) and evacuate the emissions to a control device(s). As described in section IV.D.2, the maximum modeled chronic noncancer inhalation TOSHI value is 2 after full enclosure and evacuation of emissions based on the post-control modeling analysis. This means that the modeled concentration at the maximum impact location after these controls are in place would be 0.1 μg/m$^3$, which is 2 times higher than the value of the RfC for manganese. Therefore, achieving and maintaining an air manganese level of 0.1 μg/m$^3$ at the facility boundary is proposed as the equivalent alternative standard to minimize emissions of HAP metals. Nevertheless, we request comment on other concentration values that might be appropriate to serve as the concentration level for fenceline monitoring under this alternative. We also request comment on whether a different averaging period should be required.

As part of this alternative, we are also proposing a provision that would allow for reduced monitoring if the facility demonstrates ambient manganese concentrations less than 50 percent of the ambient manganese concentration limit for 3 consecutive years at each monitor. We propose that a revised monitoring plan may be submitted (for review and possible approval by the Administrator) to reduce the sampling and analysis frequency if all of the 10-sample rolling average concentrations at each monitor are less than 50 percent of the limit of 0.1 μg/m$^3$ over a 3-year period.

All of these proposed controls are described further under the technology review (in section IV.D.2.) of this preamble.

c. Results of the Post-Control Risk Assessment

The results of the post-control chronic inhalation cancer risk assessment indicate that, based on actual emissions, the maximum individual lifetime cancer risk posed by these two facilities, after the implementation of the proposed controls, could be up to 5 in one million, reduced from 80 in one million (*i.e.,* pre-controls), with an estimated reduction in cancer incidence to 0.0004 excess cancer cases per year, reduced from 0.002 excess cancer cases per year. In addition, the number of people estimated to have a cancer risk greater than or equal to one in one million would be reduced from 26,000 to 1,300.

The results of the post-control assessment also indicate that, based on actual emissions, the maximum chronic noncancer inhalation TOSHI value would be reduced to 2, from the baseline estimate of 90. The number of people estimated to have a TOSHI greater than 1 would be reduced from 28,000 to less than 10.

We also estimate that after the implementation of controls, the maximum worst-case acute refined HQ value would be reduced from a potential high of 10 to 0.3 (based on the REL value for nickel compounds) eliminating any potential for acute impacts of concern.

Considering post-control emissions of multipathway HAP, mercury emissions would be reduced approximately 88 percent, while POM emissions would be reduced approximately 66 percent from the baseline emission rates. Based on our intermediate screening approach for multipathway risks, emissions of mercury ''screen out,'' or are reduced below the screening threshold for both facilities, indicating no potential for multipathway impacts of concern due to mercury. However, emissions of POM (as benzo(a)pyrene TEQ) remain above the intermediate screening thresholds for both facilities (one by a factor of 20 and one by a factor of 2), indicating that we cannot rule out the potential for multipathway impacts of concern due to emissions of POM from these facilities.

As mentioned above, the highest lead concentration after controls, 0.02 μg/m³, is well below the NAAQS, indicating a low potential for multipathway impacts of concern due to lead.

3. Ample Margin of Safety Analysis and Proposed Controls

Under the ample margin of safety analysis, we evaluate the cost and feasibility of available control technologies and other measures (including the controls, measures and costs reviewed under the technology review) that could be applied in this source category to further reduce the risks due to emissions of HAP identified in our risk assessment.

We estimate that the actions proposed under CAA section 112(f)(2), as described above to address unacceptable risks, will reduce the MIR associated with arsenic, nickel and chromium from 80 in one million (50 in one million using the lower end of the nickel URE range) to 5 in one million for actual emissions. The cancer incidence will be reduced from 0.002 to 0.0004, and the number of people estimated to have cancer risks greater than one in one million will be reduced, from 26,000 people to 1,300 people. The chronic noncancer inhalation TOSHI will be reduced from 90 to 2, and the number of people exposed to a TOSHI level greater than 1 will be reduced from 28,000 people to less than 10 people. In addition, the maximum acute HQ value will be reduced from potentially up to 10 to less than 1, and the potential multipathway impacts will be reduced.

Based on all of the above information, we conclude that the risks after implementation of the proposed controls are acceptable. Based on our research and analysis, we did not identify any cost-effective controls beyond those proposed above that would achieve further reduction in risk. Therefore we conclude that the controls to achieve acceptable risks (described above) will also achieve an ample margin of safety. Although we conclude that the implementation of the proposed requirements described above will provide public health protection with an ample margin of safety we acknowledge that there may be other control technologies that may also achieve these goals.

We are soliciting comments and information regarding additional dust and process fugitive control measures and work practices that may be more feasible to implement and effective in further reducing process and dust fugitive emissions of metal HAP, or additional monitoring that may be warranted to ensure adequate control of fugitive emissions. We also request comments on the cost effectiveness of achieving the proposed process fugitive control measures and any additional options that may be more cost effective.

We also note that we are soliciting comment on our proposed risk finding. If we conclude, after evaluating data and information received in comments on this proposed rule, that the risks posed by this source category are acceptable, then based on the data and information we currently have, we would likely adopt the same controls described in section IV.C.2 as being necessary to provide an ample margin of safety. As noted above in this section and in section IV.C.2.c., the proposed controls provide significant risk reductions beyond the current rule. Furthermore, as discussed more extensively in section IV.D.2 of this notice, below, we conclude that these controls are cost effective and technically feasible. We solicit comment on the appropriateness of these controls in the event we find, based on data and information received in comment, that the current rule provides an acceptable risk.

*D. What are the results and proposed decisions based on our technology review?*

Based on our technology review, we determined that there have been advances in emissions control measures since the Ferroalloys Production NESHAP was originally promulgated in 1999. Since promulgation, facilities have steadily improved the performance of their control devices through upgrades or replacements. They have also developed improved capture techniques for some process fugitives (*e.g.,* casting and tapping emissions). Additional details regarding these analyses can be found in the following technical document for this action which is available in the docket: *Draft Technology Review for the Ferroalloys Production Source Category.*

1. Metal HAP Emissions From Stacks

We propose to continue to use particulate matter as a surrogate for metal HAP other than mercury. For a discussion regarding the appropriateness of particulate matter as a surrogate for non-mercury metal HAP, please see the memo ''Surrogate for Metal HAP Emissions for the Ferroalloys Source Category'' in the docket for this proposed rule. Based on the results from the ICR test program, we determined that all of the sources of stack emissions are emitting at significantly lower levels than their maximum permitted levels. For this reason, under the authority of CAA section 112(d)(6), we are proposing revised emission limits for new and existing sources. We are also proposing that any uncontrolled furnace vent stacks would be subject to the same concentration limits.

We calculated the proposed emission limits based on a UPL analysis, resulting in a proposed existing source furnace stack emissions limit of 24 mg/dscm and proposed new source furnace stack emissions limit of 9.3 mg/dscm. We also calculated a proposed stack emission limit of 13 mg/dscm for crushing and screening equipment that would apply to both new and existing sources.

The metal oxygen refining operation is a unique process, and so we only have a single ICR test data point. Therefore, we calculated a proposed emissions limit for this source using the 99 percent UPL from the test data, resulting in a proposed limit of 3.9 mg/dscm that would apply to new and existing metal oxygen refining operation sources. We request comment on whether we should instead set the MOR limit to be the same as the proposed furnace stack limit for existing sources. This change would allow a facility to use any excess capacity in the MOR control device to treat furnace emissions, if needed. Such a limit is still more stringent than the current limit included in subpart XXX for the MOR (approximately 69 mg/dscm).

Based on our analyses, we expect that no additional controls would be required for the facilities to comply with these proposed limits. To demonstrate compliance, we propose that sources would be required to conduct periodic performance testing, and develop and operate according to a baghouse operating plan or continuously monitor scrubber operating parameters. Furnace baghouses would be required to be equipped with bag leak detection systems (BLDS).

2. Metal HAP Emissions From Process Fugitives

As described above, we evaluated several options to improve and increase the capture and control of process fugitive sources. The two main options involve either local ventilation or building ventilation. Local ventilation (*e.g.,* hoods or ductwork located in close proximity to an emissions source such as tapping or casting) is common in this industry, but performance varies due to design of the capture system, maintenance practices and control device capacity. Industry representatives have expressed concern that extensive retrofitting of local ventilation is complicated at existing facilities because of the need for

material movement using large overhead cranes and ladles. We identified a furnace building ventilation system at a ferrosilicon producer, using a similar production process. This ''system'' is basically an enclosure of the furnace building with evacuation of emission to a control device.

We evaluated an option to enclose the furnace building(s) and evacuate the emissions to a control device(s) similar to the system used at the ferrosilicon producing facility described above. Based on that evaluation, we believe that it is feasible to install enclosures and have the fugitive emissions at the ridge vents of the shop building collected under negative pressure and ducted to a control device, and have a PM emissions limit at the control device the same as it is for the furnace stacks (*i.e.,* 24 mg/dscm). This would allow sources the option to duct some or all process fugitive emissions to an existing furnace control device if it has excess capacity. If it does not have excess capacity, the facility would have to install additional controls. Under this option, the source would also have to monitor building opacity; prepare and operate according to a process fugitives emissions ventilation plan, which would include requirements to demonstrate that the building is being operated at a negative pressure of at least 0.007 inches of water; and conduct periodic performance testing of the building ventilation control device to demonstrate compliance with the proposed standards. Baghouses would be required to be equipped with BLDS.

We estimate the total capital costs of installing the required ductwork, fans, and baghouses under this option to be $9.4 million and the total annualized costs to be $2.3 million for the two plants. We estimate that particulate metal HAP emissions would be reduced by 81 tons, resulting in a cost per ton of HAP removed at $28,000 per ton ($14 per pound). We also estimate that this option would achieve PM emission reductions of 630 tons, resulting in a cost per ton of PM removed at $3,600 per ton and achieve $PM_{2.5}$ emission reductions of 257 tons, resulting in a cost per ton of $PM_{2.5}$ removed of $8800 per ton. In light of the technical feasibility and cost effectiveness of this approach, we are proposing this option under the authority of section 112(d)(6). These proposed requirements are exactly the same as those proposed under Section 112(f) which are described in section IV.C.2 of this preamble.

As described above in section IV.C.2.b, we are also proposing an equivalent alternative compliance approach. Facilities can design and implement an equivalent alternative approach (*e.g.,* local capture, controls, and work practices) to achieve equivalent reductions of their process fugitive emissions. Compliance would be demonstrated by ensuring facilities apply the equivalent alternative approach to control process fugitive emissions, continue the work practices to minimize outdoor fugitive dust emissions, and also conduct fenceline monitoring to demonstrate that the ambient concentration of manganese at their facility boundary is no more than 0.1 $\mu g/m^3$ on a 60-day rolling average.

3. Hydrochloric Acid, Formaldehyde, Mercury and PAH Emissions From Furnace Stacks

The controls for HCl, formaldehyde, mercury and PAHs were described in Section IV.A., and no additional controls have been identified.

4. Outdoor Fugitive Dust Emissions

The existing rule has a requirement for an outdoor fugitive dust control plan. We are unable to quantify HAP emissions from outdoor fugitive dust sources and did not identify any additional procedures or controls that could be expected to have a significant impact on these emissions. Therefore, we are not proposing to change the existing requirements.

*E. What other actions are we proposing?*

1. Startup, Shutdown, Malfunction

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied,* 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the ''General Provisions Rule,'' that the EPA promulgated under CAA section 112. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emissions standard during periods of SSM.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 1 to subpart XXX of part 63 (the General Provisions Applicability table). For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate or revise certain recordkeeping and reporting that related to the SSM exemption. The EPA has attempted to ensure that we have not included in the proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed different standards for those periods.

Information on periods of startup and shutdown received from the industry in the ICR indicate that emissions during these periods do not increase. Control devices such as baghouses for metal HAP particulate control and activated carbon controls for mercury are started up before the process units, and are operational during the shutdown phase of a process. Therefore, no increase in emissions is expected during these periods. Building ventilation systems for process fugitive emissions will be in place at all times. Therefore, separate standards for periods of startup and shutdown are not being proposed.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' (40 CFR 63.2). The EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source, and emission standards for existing sources generally must be no less stringent than the average emissions limitation ''achieved'' by the best performing 12 percent (or 5 sources in cases where there are fewer than 30 sources in the source category) of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing or best controlled sources when setting emissions

standards. Moreover, while the EPA accounts for variability in setting emissions standards consistent with the CAA section 112 case law, nothing in that case law requires the Agency to consider malfunctions as part of that analysis. Section 112 of the CAA uses the concept of ''best controlled'' and ''best performing'' unit in defining the level of stringency that CAA section 112 performance standards must meet. Applying the concept of ''best controlled'' or ''best performing'' to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events.

Further, accounting for malfunctions would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. *See, e.g., Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (DC Cir. 1999) (The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to ''invest the resources to conduct the perfect study.'') *See also, Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation''). In addition, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation'' 40 CFR 63.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause an exceedance of the relevant emissions standard. (See, *e.g.,* State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983)). The EPA is therefore proposing to add to the final rule an affirmative defense to civil penalties for exceedances of emissions limits that are caused by malfunctions. See 40 CFR 63.1622 (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also are proposing other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.1627 (40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emissions limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with 40 CFR 63.1623(g) and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emissions limitations were being exceeded * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with CAA section 113 (see also 40 CFR 22.27).

The EPA included an affirmative defense in the proposed rule in an attempt to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission limits may be exceeded under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). *See generally Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (DC Cir. 2008). Thus, the EPA is required to ensure that section 112 emissions limitations are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission limitation is still enforceable through injunctive relief. While ''continuous'' limitations, on the one hand, are required, there is also caselaw indicating that in many situations it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (DC Cir. 1973), the DC Circuit acknowledged that in setting standards under CAA section 111 ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See also, *Portland Cement Association* v. *Ruckelshaus,* 486 F.2d 375 (DC Cir. 1973). Though intervening caselaw such as *Sierra Club* v. *EPA* and the CAA 1977 amendments undermine the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil

penalties for excess emissions that are proven to be beyond the control of the source. By incorporating an affirmative defense, the EPA has formalized its approach to upset events. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). *But see, Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (DC Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission limitations are ''continuous'' as required by 42 U.S.C. 7602(k), and account for unplanned upsets and thus support the reasonableness of the standard as a whole.

Specifically, we are proposing the following changes to the rule.

- Added general duty requirements in 40 CFR 63.1623(g) to replace General Provision requirements that reference vacated SSM provisions.
- Added replacement language that eliminates the reference to SSM exemptions applicable to performance tests in 40 CFR 63.1625(a)(5).
- Added paragraphs in 40 CFR 63.1629(d) requiring the reporting of malfunctions as part of the affirmative defense provisions.
- Added paragraphs in 40 CFR 63.1629(b) requiring the keeping of certain records during malfunctions as part of the affirmative defense provisions.
- Developed Table 1 to subpart XXX of part 63 to reflect changes in the applicability of the General Provisions to this subpart resulting from a court vacatur of certain SSM requirements in the General Provisions.

2. Electronic Reporting

The EPA and other authorities such as state, local and tribal agencies must have performance test data to conduct effective reviews of CAA sections 112 and 129 standards, as well as for many other purposes including compliance determinations, emission factor development, and annual emission rate determinations. We believe that improvements in the process of submitting, reviewing and storing test data would result in increases in efficiency and cost savings to the regulated community; state, local and tribal agencies; the public and ourselves. These improvements are possible because stack testing firms are increasingly collecting performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

Through this proposal, the EPA is proposing a step to increase the ease and efficiency of data submittal and improve data accessibility. Specifically, the EPA is proposing that owners and operators of Ferroalloys Production facilities submit electronic copies of required performance test reports to the EPA's WebFIRE database. The WebFIRE database was constructed to store performance test data for use in developing emission factors. A description of the WebFIRE database is available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.*

As proposed above, data entry would be through an electronic emissions test report structure called the Electronic Reporting Tool (ERT). The ERT would be able to transmit the electronic report through the EPA's Central Data Exchange network for storage in the WebFIRE database, making submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/index.html.*

The proposal to submit performance test data electronically to the EPA would apply only to those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. A listing of the pollutants and test methods supported by the ERT is available at *http://www.epa.gov/ttn/chief/ert/index.html.* We believe that industry would benefit from this proposed approach to electronic data submittal. Having these data, the EPA would be able to develop improved emission factors, make fewer information requests, and promulgate better regulations.

One major advantage of the proposed submittal of performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule. Another advantage is that the ERT clearly states what testing information would be required. Another important proposed benefit of submitting these data to the EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. When the EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This would result in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and the EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local, and tribal agencies could also benefit from more streamlined and accurate review of electronic data submitted to them. The ERT would allow for an electronic review process rather than a manual data assessment making review and evaluation of the source provided data and calculations easier and more efficient. Finally, another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, the EPA would be able to ensure that emission factors, when updated, represent the most current range of operational practices. In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data would save industry, state, local, tribal agencies, and the EPA significant time, money, and effort while also improving the quality of emission inventories and, as a result, air quality regulations.

3. Emissions Averaging

We are proposing to add an emissions averaging option for electric arc furnace stack emissions (PM, mercury, PAH, HCl or formaldehyde). If you have more than one existing emission source (*e.g.,* electric arc furnace) located at one or more contiguous properties, which are under common control of the same person (or persons under common control), you may demonstrate compliance by emission averaging among the existing emission sources, if your averaged emissions for such emission sources are equal to or less than the applicable emission limit.

We are also proposing to allow averaging between existing process fugitive control devices for PM stack emissions as a second averaging group. However, we believe it may be appropriate to combine these process fugitive stack emissions into the furnace stack averaging group for PM emissions

for two reasons. First, both types of emissions are likely to be controlled with similar, if not common control devices, *e.g.,* large fabric filters. Second, we are proposing to apply an identical PM emission limit for both of these emission sources, which would simplify averaging of PM emissions. We request comment on this option.

We are also proposing to allow averaging between existing crushing and screening equipment for PM stack emissions. We believe this is a distinct averaging group compared to the furnace and process fugitives groups. The airflow and associated control devices are typically much smaller and they are subject to a more stringent emission limit than the other PM sources. However, we request comment on the potential for more broadly defined averaging options for this group.

As part of the EPA's general policy of encouraging the use of flexible compliance approaches where they can be properly monitored and enforced, we are including emissions averaging for existing sources in this proposed rule. Emissions averaging can provide sources the flexibility to comply in the least costly manner while still maintaining regulation that is workable and enforceable. Emissions averaging would allow owners and operators of an existing affected source to demonstrate that the source complies with the proposed emission limits by averaging the emissions from an individual affected emission unit that is emitting above the proposed emission limits with other affected emission units at the same facility that are emitting below the proposed emission limits and that are within the same averaging group, as described below.

This proposed rule includes an emissions averaging compliance alternative because emissions averaging represents an equivalent, more flexible, and less costly alternative to controlling certain emission points to MACT levels. We have concluded that a limited form of averaging could be implemented that would not lessen the stringency of the MACT limits and would provide flexibility in compliance, cost and energy savings to owners and operators of existing sources. We also recognize that we must ensure that any emissions averaging option can be implemented and enforced, will be clear to sources, and most importantly, will be no less stringent than unit by unit implementation of the MACT limits.

The EPA is proposing to establish within a NESHAP a unified compliance regimen that permits averaging within an existing affected source across individual affected units subject to the standard under certain conditions. Averaging across affected units is permitted only if it can be demonstrated that the total quantity of any regulated pollutant that may be emitted by that portion of a contiguous major source that is subject to the NESHAP will not be greater under the averaging mechanism than it could be if each individual affected unit complied separately with the applicable standard. Under this test, the practical outcome of averaging is equivalent to compliance with the MACT limits by each discrete unit, and the statutory requirement that the MACT standard reflect the maximum achievable emissions reductions is, therefore, fully effectuated.

In past rulemakings, the EPA has generally imposed certain limits on the scope and nature of emissions averaging programs. These limits include: (1) No averaging between different types of pollutants; (2) no averaging between sources that are not part of the same affected source; (3) no averaging between individual sources within a single major source if the individual sources are not subject to the same NESHAP; and (4) no averaging between existing sources and new sources. This proposed rule is consistent with these limitations. First, emissions averaging would only be permitted between individual sources at a single existing affected source, and would only be permitted between individual sources subject to the proposed Ferroalloys Production NESHAP. Further, emissions averaging would not be permitted between two or more different affected sources. Finally, new affected sources could not use emissions averaging. Accordingly, we have concluded that the averaging of emissions across affected units is consistent with the CAA.

In addition, this proposed rule would require each facility that intends to utilize emission averaging to submit an emission averaging plan, which provides additional assurance that the necessary criteria will be met. In this emission averaging plan, the facility must include the identification of: (1) All units in the averaging group; (2) the control technology installed; (3) the process parameters that will be monitored; (4) the specific control technology or pollution prevention measure(s) to be used; (5) the test plan for the measurement of the HAP being averaged; and (6) the operating parameters to be monitored for each control device. Upon receipt, the regulatory authority would not be able to approve an emission averaging plan containing averaging between emissions of different types of pollutants or between different affected sources (e.g., between furnaces and crushing and screening equipment).

We seek comment on use of a discount factor when emissions averaging is used and on the appropriate value of a discount factor, if used. Such discount factors (e.g., 10 percent) have been used in previous NESHAP, particularly where there was variation in the types of units within a common source category to ensure that the environmental benefit was being achieved. In this situation, however, the affected sources are more homogeneous, making emissions averaging a more straight forward analysis. Further, with the monitoring and compliance provisions that are being proposed, there is additional assurance that the environmental benefit will be realized. The emissions averaging provisions in this proposed rule are based in part on the emissions averaging provisions in the Hazardous Organic NESHAP (HON). The legal basis and rationale for the HON emissions averaging provisions were provided in the preamble to the final HON.[36]

4. Other Changes

The following lists additional minor changes to the NESHAP we are proposing. The main focus of these changes is to ensure that the rule provides adequate monitoring, reporting, recordkeeping and testing provisions to ensure that the affected sources are able to demonstrate continuous compliance with the proposed standards. These changes reflect changes we have made to many other existing NESHAP to improve the quality of these compliance requirements. This list also includes proposed rule changes that address editorial corrections and plain language revisions:

- Reduce frequency of emission testing for the primary furnace control devices for PM and propose periodic testing for PM and other regulated pollutants. This change is possible because of requirement to conduct continuous monitoring. Also add a periodic testing requirement for the building ventilation system control devices and crushing and screening equipment control devices.
- Add requirement for new and existing baghouses that control furnace or building ventilation systems to be equipped with BLDS to demonstrate continuous compliance. Retain provisions for baghouses to have a baghouse SOP manual.
- Add requirements to implement and enforce more detailed requirements for

[36] Hazardous Organic NESHAP (59 FR 19425; April 22, 1994).

continuous parameter monitoring systems to ensure continuous compliance.

- Reduce the shop building opacity limit to 10 percent opacity to reflect current industry performance. Eliminate 6-minute excursion level because it does not provide any significant flexibility (sources that tend to exceed the general opacity limit in any 6-minute period tend to do so for several minutes so that the excursions for one 6-minute period is meaningless). Eliminate events excluded from the opacity observation as they are infrequent, can be avoided in some cases, are emitted from operations we intend to control better, and can be confusing to enforce.
- Change the format of the PM standards to reflect an outlet concentration format (mg/dscm). This format is the direct output of the emissions test and reflects the constant output nature of the predominant control device, *i.e.,* a baghouse.
- Add PM continuous emissions monitoring system as an alternative to installing and operating a BLDS.
- Editorial changes, including revising the titles of sections in the subpart to better reflect the description of proposed requirements and to make the regulation easier for the reader to navigate.
- Update the recordkeeping and reporting sections to reflect the new monitoring requirements and monitoring options described above.
- Update the compliance dates to include the anticipated dates the proposed requirements will become effective.

### *F. What compliance dates are we proposing?*

We are proposing that facilities must comply with the new proposed requirements in this action (which are being proposed under CAA sections 112(d)(2), 112(d)(3), 112(d)(6) and 112(f)(2) for all affected sources), no later than 2 years after the effective date of this rule. In the period between the effective date of this rule and the compliance date, existing sources would continue to comply with the existing requirements specified in §§ 63.1650 through 63.1661.

Under 40 CFR 63.6(i)(4)(ii), ''the owner or operator of an existing source unable to comply with a relevant standard established * * * pursuant to section 112(f) * * * may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard.'' The rule further specifies a written application for such a request. Here, the EPA is already fully aware of the steps needed for each source to comply with the proposed standards and to reasonably estimate the amount of time it will take each source to do so. We believe that the 2-year extension would be warranted in all cases for sources needing to upgrade current practice. This includes the time needed to: Construct required building ventilation systems and install associated control devices for process fugitive sources; determine appropriate mercury and PAH control devices, locations, amount and type of carbon needed and assess potential waste disposal issues; select and install appropriate monitoring technologies; seek bids, select a vendor, install and test the new equipment; and, purchase, install and conduct QA and quality control measures on compliance monitoring equipment (see *Estimated Time Needed to Achieve Compliance with The Proposed Revisions to the MACT standard for Ferroalloys Production Facilities,* which is available in the docket for this proposed action). The EPA believes it reasonable to interpret 40 CFR 63.6(i)(4)(ii) to allow this plenary finding, rather than utilizing a facility-by-facility application process, when the facts are already known and a category-wide adjudication is therefore possible. In addition, utilizing this process allows for public comment on the issue which would not be possible if a case-by-case application process with a 90-day window for completion were used.

## V. Summary of Cost, Environmental, and Economic Impacts

### *A. What are the affected sources?*

We anticipate that the two manganese production ferroalloys production facilities currently operating in the United States will be affected by these proposed amendments. We do not know of any new facilities that are expected to be constructed in the foreseeable future. However, there is one facility that has a permit to produce ferromanganese or silicomanganese in an electric arc furnace, but it did so for only a brief period, several years ago. It is possible that this facility could resume production or another non-manganese ferroalloy producer could decide to commence production of ferromanganese or silicomanganese. One of the existing facilities is considering building a new manganese furnace, but their timeline and actual intent to go forward is unclear. Given this uncertainty, our impact analysis is focused on the two existing sources that are currently operating.

### *B. What are the air quality impacts?*

The EPA estimated the emissions reductions that are expected to result from the proposed amendments to the 1999 NESHAP compared to the 2010 baseline emissions estimates. A detailed documentation of the analysis can be found in: *Draft Cost Impacts of the Revised NESHAP for the Ferroalloys Production Source Category.*

Emissions of metal HAP from ferroalloys production sources have declined in recent years, primarily as the result of state actions and also due to the industry's own initiative. The current proposal would cut HAP emissions (primarily particulate metal HAP such as manganese, arsenic and nickel) by 60 percent from their current levels. Under the proposed emissions limit for process fugitives emissions from the furnace building, we estimate that the HAP emissions reductions would be 81 tpy, including significant reductions of manganese. We also anticipate mercury reductions of 420 lb/yr and PAH reductions of 2.5 tpy from installation of activated carbon injection controls at one facility. Total HAP reductions for the two facilities are estimated to be 84 tpy.

Based on the emissions data available to the EPA, we believe that both facilities will be able to comply with the proposed emissions limits for HCl and formaldehyde without additional controls. There may be some formaldehyde emission reductions at the facility that we believe will be required to install an activated carbon injection system, but we have not quantified these reductions because of the uncertainty of the effectiveness of the activated carbon system designed for mercury and PAH removal compared to formaldehyde removal. We do not anticipate any reductions in HCl.

### *C. What are the cost impacts?*

Under the proposed amendments, ferroalloys production facilities are expected to incur capital costs for the installation of ductwork and baghouses for building ventilation and activated carbon injection systems. There would also be capital costs associated with installing new or improved continuous monitoring systems, included installation of BLDS on the furnace and building ventilation baghouses that are not currently equipped with these systems.

The capital costs for each facility were estimated based on the number and types of upgrades required. The memorandum *Draft Cost Impacts of the Revised NESHAP for the Ferroalloys Production Source Category* includes a complete description of the cost estimate methods used for this analysis and is available in the docket.

The majority of the capital costs estimated for compliance with the amendments proposed in this action are for purchasing new control devices. For the shop building ventilation system, we assumed that each facility would

need to install a building ventilation system in order to comply with the proposed shop building emissions limits. For each facility, we estimated the square footage of shop building air that would need to be evacuated and the size of control device that would be required. Although the proposed amendments would provide the alternative option to install monitors at or near the property boundary to demonstrate compliance with the building ventilation requirements, we assume that sources would be unlikely to meet the alternative standard without improving the level of control in the shop building.

To estimate the cost for the building ventilation fabric filter, we contacted a vendor who had recently supplied a fabric filter to one of the facilities to obtain assistance in developing a cost estimate for the installation. The equipment-only cost supplied by the vendor was used in conjunction with techniques described in the sixth edition of the EPA Air Pollution Control Cost Manual [37] to estimate total installed capital cost and annual costs.

Our cost model included installation of the baghouse and any necessary fans, ductwork, and site work, including extra ductwork for connection to the building roof monitors. The total installed capital cost of three fabric filters (two at one facility, one at the second facility) designed for a flow-rate of 150,000 actual cubic feet per minute was estimated at $9.4 million. The annualized capital cost and operational and maintenance costs are estimated at $2.3 million, via techniques described in the sixth edition of the EPA Air Pollution Control Cost Manual. The annualized cost assumes a 20-year life expectancy for the unit and, to be consistent with OMB Guidance in Circular A–4, a 7 percent cost of capital as an estimate of the annualized capital cost.

We considered installation of both fixed carbon beds and activated carbon injections for the control of mercury and PAH emissions. After talking to carbon vendors, we learned that fixed carbon beds are not a viable option given the size of the furnace airstream we would need to control. We also considered whether to put the activated carbon injection upstream or downstream of the existing PM control device. By installing the system downstream of the PM control device, we would avoid potential concerns with the activated carbon interfering with potential sale or reuse of baghouse dust or potential increase in mercury load in the scrubber sludge impoundment. This approach requires installation of a separate ''polishing'' baghouse to capture the injected carbon for disposal.

Unlike activated carbon systems used primarily for control of volatile organic compounds, we have been told that mercury impregnated compounds cannot be recycled. There is concern that such downstream control could result in sufficient concentration of mercury in the baghouse dust that the facility would be required to treat such dust as a hazardous waste under the RCRA. However, based on conversations with vendors and other mercury control experts, we believe that the resulting waste will most likely be nonhazardous. We are seeking comments on the cost methodology and assumptions used to develop these cost estimates.

Costs for Activated Carbon Injection (ACI) were estimated using cost equations developed for the Utility NESHAP.[38] The calculated equipment costs for ACI and fabric filters were used in conjunction with techniques described in the sixth edition of the EPA Air Pollution Control Cost Manual to estimate total installed capital cost and annual costs. Our cost model included installation of the two ACI systems, one polishing fabric filter, and associated fans, ductwork, and site work. We estimate the total capital costs are $1.7 million and the annual costs are $1.4 million.

The estimated costs for the proposed change to the monitoring requirements for baghouses, including installation of seven new BLDS for four existing furnace baghouses and three building ventilation baghouses is $270,000 of capital cost. The capital cost for a differential pressure monitor to ensure that shop buildings are under negative pressure is $9,200. The capital cost estimated for a continuous parameter monitoring system for the wet scrubber at one facility is estimated to be $50,000. Finally, the estimated capital cost for carbon injection monitoring is $20,000. The capital costs for all additional monitoring and recordkeeping requirements, including the baghouse monitoring proposed, is estimated at $340,200.

Annualized costs are estimated to be $94,000 for the BLDS, $18,000 for the scrubber parameter monitoring system, and $6,200 for the carbon injection monitoring system. There is also an estimated annualized cost to monitor the manganese ore content for mercury emissions of $1,200. The estimated annual cost for reporting and recordkeeping is $37,000. We estimate the costs of the periodic performance testing requirements to be $800,000. The resulting total annualized costs are $347,000.

The total annualized costs for the proposed rule are estimated at $4.0 million (2010 dollars). Table 6 provides a summary of the estimated costs and emissions reductions associated with the proposed amendments to the Ferroalloys Production NESHAP presented in today's action.

TABLE 6—ESTIMATED COSTS AND REDUCTIONS FOR THE PROPOSED STANDARDS IN THIS ACTION

| Proposed amendment | Estimated capital cost ($MM) [1] | Estimated annual cost ($MM) | Total HAP emissions reductions (tpy) | Cost effectiveness in $ per ton total HAP reduction (and in $ per pound) |
|---|---|---|---|---|
| Capture and Control Process Fugitives | 9.4 | 2.3 | 81 (of metal HAP) | $0.03 MM per ton. ($14 per pound). |
| MACT Limits for Mercury | 1.7 | 1.4 | 0.2 (of mercury) | $6.7 MM per ton. ($3,300 per pound). |
| MACT Limits for co-control of PAH | NA | N/A | 2.5 (of PAH) | N/A. |
| HCl and formaldehyde concentration limits | 0 | 0 | 0 | N/A. |
| Compliance testing over 3-year period | N/A | 0.26 | N/A | N/A. |
| Annual average monitoring over 3-year period | 0.11 | 0.08 | N/A | N/A. |

[37] *http://epa.gov/ttn/catc/products.html#cccinfo.*

[38] Sargent & Lundy, IPM Model—Revisions to Cost and Performance for APC Technologies, Mercury Control Cost Development Methodology Final, March, 2011. *http://www.epa.gov/airmarkt/progsregs/epa-ipm/docs/append5_3.pdf.*

*D. What are the economic impacts?*

We estimate that there will be no more than a 0.2 percent price change and a similar reduction in output associated with the proposal. The impacts to affected firms will be low because the annual compliance costs are quite small when compared to the annual revenues for the two affected parent firms (much less than 1 percent for each). The impacts to affected consumers should also be quite small. Thus, there will not be any significant impacts on affected firms and their consumers as a result of this proposal.

*E. What are the benefits?*

We estimate the monetized benefits of this regulatory action to be $71 million to $170 million (2010$), at a 3 percent discount rate in the implementation year (2015). The monetized benefits of the regulatory action at a 7 percent discount rate are $63 million to $160 million (2010$) in the same implementation year. Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower benefits estimates are plausible, but most of the expert-based estimates fall between these two estimates.[39] A summary of the monetized benefits estimates at discount rates of 3 percent and 7 percent is in Table 7 of this preamble.

TABLE 7—SUMMARY OF THE MONETIZED BENEFITS ESTIMATES FOR THE FERROALLOYS INDUSTRY IN 2015

[Millions of 2010$]

| Pollutant | Estimated emission reductions (tpy) | Total monetized benefits (3% discount rate) | Total monetized benefits (7% discount rate) |
|---|---|---|---|
| $PM_{2.5}$ | 257 | $71 to $170 | $63 to $160. |

[1]All estimates are for the implementation year (''2015'', assuming the final rule is published in January 2012) and are rounded to two significant figures so numbers may not sum across rows. All fine particles are assumed to have equivalent health effects. Benefits from reducing HAPs emissions are not included.

These benefits estimates represent the total monetized human health benefits for populations exposed to less $PM_{2.5}$ in 2015 from controls installed to reduce air pollutants in order to meet these proposed standards. These estimates are calculated as the sum of the monetized value of avoided premature mortality from reducing $PM_{2.5}$. To estimate human health benefits derived from reducing $PM_{2.5}$, we used the general approach and methodology laid out in Fann, Fulcher, and Hubbell (2009).[40] However, in this proposal we utilized source apportionment air quality modeling for the ferroalloys industry.[41] Therefore all benefits per ton estimates are specific to the ferroalloys sector.

To generate the BPT estimates, we used a model to convert emissions of direct $PM_{2.5}$ into changes in ambient $PM_{2.5}$ levels and another model to estimate the changes in human health associated with that change in air quality. Finally, the monetized health benefits were divided by the emission reductions to create the BPT estimates. These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type. In this rule only directly emitted $PM_{2.5}$ is considered. Direct $PM_{2.5}$ emissions convert directly into ambient $PM_{2.5}$; thus, to the extent that emissions occur in population areas, exposures to direct $PM_{2.5}$ will tend to be higher than exposure to any other precursor, and monetized health benefits will be higher as well.

For context, it is important to note that the magnitude of the PM benefits is largely driven by the concentration response function for premature mortality. Experts have advised the EPA to consider a variety of assumptions, including estimates based on both empirical (epidemiological) studies and judgments elicited from scientific experts, to characterize the uncertainty in the relationship between $PM_{2.5}$ concentrations and premature mortality. For this rule, we cite two key empirical studies, the American Cancer Society cohort study[42] and the extended Six Cities cohort study.[43] In the Regulatory Impact Analysis (RIA)[44] for this rule, we also include benefits estimates derived from expert judgments and other assumptions.

The EPA strives to use the best available science to support our benefits analyses. We recognize that interpretation of the science regarding air pollution and health is dynamic and evolving. After reviewing the scientific literature and recent scientific advice, we have determined that the no-threshold model is the most appropriate model for assessing the mortality benefits associated with reducing $PM_{2.5}$ exposure. Consistent with this recent advice, we are replacing the previous threshold sensitivity analysis with a new ''Lowest Measured Level (LML)'' assessment. While an LML assessment provides some insight into the level of uncertainty in the estimated PM mortality benefits, the EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations.

Most of the estimated PM-related benefits in this rule would accrue to populations exposed to higher levels of $PM_{2.5}$. Using the Pope, *et al.,* (2002) study, 89 percent of the population is exposed at or above the LML of 7.5 μg/m$^3$. Using the Laden, *et al.,* (2006) study, 31 percent of the population is exposed above the LML of 10 μg/m$^3$. It is important to emphasize that we have high confidence in $PM_{2.5}$-related effects down to the lowest LML of the major cohort studies. This fact is important,

[39] Roman, *et al.,* 2008. Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S. Environ. Sci. Technol., 42, 7, 2268–2274.

[40] Fann, N., C.M. Fulcher, B.J. Hubbell. 2009. ''The influence of location, source, and emission type in estimates of the human health benefits of reducing a ton of air pollution.'' Air Qual Atmos Health (2009) 2:169–176.

[41] U.S. Environmental Protection Agency. 2011. *Technical support document: Estimating the benefit per ton of reducing $PM_{2.5}$ precursors from the ferroalloy sector (Draft);* EPA: Research Triangle Park, NC.

[42] Pope *et al,* 2002. ''Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution.'' Journal of the American Medical Association. 287:1132–1141.

[43] Laden et al, 2006. ''Reduction in Fine Particulate Air Pollution and Mortality.'' *American Journal of Respiratory and Critical Care Medicine.* 173: 667–672.

[44] U.S. Environmental Protection Agency, 2006. Final Regulatory Impact Analysis: $PM_{2.5}$ NAAQS. Prepared by Office of Air and Radiation. October. Available on the Internet at *http://www.epa.gov/ttn/ecas/ria.html.*

because as we estimate PM-related mortality among populations exposed to levels of $PM_{2.5}$ that are successively lower, our confidence in the results diminishes. However, our analysis shows that the great majority of the impacts occur at higher exposures.

This analysis does not include the type of detailed uncertainty assessment found in the 2006 p.m.2.5 NAAQS RIA because we lack the necessary air quality input and monitoring data to run the benefits model. In addition, we have not conducted any air quality modeling for this rule. However, to estimate BPT specifically for this sector we did have some updated air quality modeling. The 2006 $PM_{2.5}$ NAAQS benefits analysis provides an indication of the sensitivity of our results to various assumptions.

It should be emphasized that the monetized benefits estimates provided above do not include benefits from several important benefit categories, including reducing other air pollutants, ecosystem effects, and visibility impairment, as well as mercury and other HAPs. Although we do not have sufficient information or modeling available to provide monetized estimates for this rulemaking, we include a qualitative assessment of the health effects of these other effects in the RIA [45] for this proposed rule.

*F. What demographic groups might benefit the most from this regulation?*

To examine the potential for any environmental justice (EJ) issues that might be associated with the source category, we performed a demographic analysis of the at-risk population. In this analysis, we evaluated the distributions of HAP-related cancer and noncancer risks from the Ferroalloys Production source category across different social, demographic and economic groups within the populations living near these two facilities. The methodology and the results of the demographic analyses are included in a technical report, *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Ferroalloys Facilities,* available in the docket for this action.

The results of the demographic analysis are summarized in Table 8 below. These results, for various demographic groups, are based on the estimated risks from actual emissions levels for the population living within 50 km of the facilities.

TABLE 8—FERROALLOY PRODUCTION DEMOGRAPHIC RISK ANALYSIS RESULTS

| | Nationwide | Population with cancer risk at or above 1-in-1 million | Population with chronic hazard index above 1 |
|---|---|---|---|
| Total Population | 285,000,000 | 26,000 | 28,000 |
| Race by Percent | | | |
| White | 75 | 97 | 97 |
| All Other Races | 25 | 3 | 3 |
| Race by Percent | | | |
| White | 75 | 97 | 97 |
| African American | 12 | 1 | 0.8 |
| Native American | 0.9 | 0.3 | 0.3 |
| Other and Multiracial | 12 | 2 | 1.8 |
| Ethnicity by Percent | | | |
| Hispanic | 14 | 1 | 0.7 |
| Non-Hispanic | 86 | 99 | 99 |
| Income by Percent | | | |
| Below Poverty Level | 13 | 13 | 13 |
| Above Poverty Level | 87 | 87 | 87 |
| Education by Percent | | | |
| Over 25 and without High School Diploma | 13 | 11 | 9 |
| Over 25 and with a High School Diploma | 87 | 89 | 91 |

The results of the Ferroalloy Production source category demographic analysis indicate that there are approximately 26,000 people exposed to a cancer risk at or above one in one million and approximately 28,000 people exposed to a chronic noncancer TOSHI greater than 1 due to emissions from the source category (we note that many of those in the first risk group are the same as those in the second). The percentages of the at-risk population in each demographic group (except for White and non-Hispanic) are similar to or lower than their respective nationwide percentages. Implementation of the provisions included in this proposal is expected to significantly reduce the number of at-risk people due to HAP emissions from these sources (from 26,000 people to about 1,000 for cancer risks and from 28,000 people to less than 10 for chronic noncancer TOSHI).

## VI. Request for Comments

We are soliciting comments on all aspects of this proposed action. In addition to general comments on this proposed action, we are also interested

[45] U.S. Environmental Protection Agency. Draft Regulatory Impact Analysis (RIA) for the Proposed Manganese Ferroalloys RTR. September 2011

in any additional data that may help to reduce the uncertainties inherent in the risk assessment and other analyses. We are specifically interested in receiving corrections to the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

## VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses are available for download on the RTR web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The data files include detailed information for each HAP emissions release point for the facilities included in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR Web page, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information. The data fields that may be revised include the following:

| Data element | Definition |
|---|---|
| Control Measure | Are control measures in place? (yes or no). |
| Control Measure Comment | Select control measure from list provided, and briefly describe the control measure. |
| Delete | Indicate here if the facility or record should be deleted. |
| Delete Comment | Describes the reason for deletion. |
| Emissions Calculation Method Code For Revised Emissions | Code description of the method used to derive emissions. For example, CEM, material balance, stack test, etc. |
| Emissions Process Group | Enter the general type of emissions process associated with the specified emissions point. |
| Fugitive Angle | Enter release angle (clockwise from true North); orientation of the y-dimension relative to true North, measured positive for clockwise starting at 0 degrees (maximum 89 degrees). |
| Fugitive Length | Enter dimension of the source in the east-west (x-) direction, commonly referred to as length (ft). |
| Fugitive Width | Enter dimension of the source in the north-south (y-) direction, commonly referred to as width (ft). |
| Malfunction Emissions | Enter total annual emissions due to malfunctions (tpy). |
| Malfunction Emissions Max Hourly | Enter maximum hourly malfunction emissions here (lb/hr). |
| North American Datum | Enter datum for latitude/longitude coordinates (NAD27 or NAD83); if left blank, NAD83 is assumed. |
| Process Comment | Enter general comments about process sources of emissions. |
| REVISED Address | Enter revised physical street address for MACT facility here. |
| REVISED City | Enter revised city name here. |
| REVISED County Name | Enter revised county name here. |
| REVISED Emissions Release Point Type | Enter revised Emissions Release Point Type here. |
| REVISED End Date | Enter revised End Date here. |
| REVISED Exit Gas Flow Rate | Enter revised Exit Gas Flowrate here ($ft^3$/sec). |
| REVISED Exit Gas Temperature | Enter revised Exit Gas Temperature here (F). |
| REVISED Exit Gas Velocity | Enter revised Exit Gas Velocity here (ft/sec). |
| REVISED Facility Category Code | Enter revised Facility Category Code here, which indicates whether facility is a major or area source. |
| REVISED Facility Name | Enter revised Facility Name here. |
| REVISED Facility Registry Identifier | Enter revised Facility Registry Identifier here, which is an ID assigned by the EPA Facility Registry System. |
| REVISED HAP Emissions Performance Level Code | Enter revised HAP Emissions Performance Level here. |
| REVISED Latitude | Enter revised Latitude here (decimal degrees). |
| REVISED Longitude | Enter revised Longitude here (decimal degrees). |
| REVISED MACT Code | Enter revised MACT Code here. |
| REVISED Pollutant Code | Enter revised Pollutant Code here. |
| REVISED Routine Emissions | Enter revised routine emissions value here (tpy). |
| REVISED SCC Code | Enter revised SCC Code here. |
| REVISED Stack Diameter | Enter revised Stack Diameter here (ft). |
| REVISED Stack Height | Enter revised Stack Height here (ft). |
| REVISED Start Date | Enter revised Start Date here. |
| REVISED State | Enter revised State here. |
| REVISED Tribal Code | Enter revised Tribal Code here. |
| REVISED Zip Code | Enter revised Zip Code here. |
| Shutdown Emissions | Enter total annual emissions due to shutdown events (tpy). |
| Shutdown Emissions Max Hourly | Enter maximum hourly shutdown emissions here (lb/hr). |
| Stack Comment | Enter general comments about emissions release points. |
| Startup Emissions | Enter total annual emissions due to startup events (tpy). |
| Startup Emissions Max Hourly | Enter maximum hourly startup emissions here (lb/hr). |
| Year Closed | Enter date facility stopped operations. |

2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).

3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).

4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID Number EPA–HQ–OAR–2010–0895 (through one of the methods described in the **ADDRESSES** section of this preamble). To expedite review of the revisions, it would also be helpful if you submitted a copy of your revisions to the EPA directly at *RTR@epa.gov* in addition to submitting them to the docket.

5. If you are providing comments on a facility, you need only submit one file for that facility, which should contain all suggested changes for all sources at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Access files, which are provided on the RTR Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.*

## VIII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

Under Section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, the EPA submitted this action to OMB for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, the EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the RIA for this proposed rule. A copy of the analysis is available in the docket for this action, and the analysis is briefly summarized above.

The cost and benefit analyses are subject to uncertainties. More information on these uncertainties can be found in the RIA and in the cost memo for the proposal.

A summary of the monetized benefits and net benefits for the proposed rule at discount rates of 3 percent and 7 percent is in Table 2 of this preamble and a more detailed discussion of the benefits is found in section V.E of this preamble.

For more information on the benefits analysis, please refer to the RIA for this rulemaking, which is available in the docket.

### *B. Paperwork Reduction Act*

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR number 2448.01. The information collection requirements are not enforceable until OMB approves them. The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

We are proposing new paperwork requirements to the Ferroalloys Production source category in the form of increased frequency and number of pollutants tested for stack testing as described in § 63.1625(c) and tighter parameter monitoring requirements to demonstrate continuous compliance as described in § 63.1625(c)(6) and § 63.1626. In conjunction shop building process fugitives monitoring, we believe that sources are currently equipped with adequate monitoring equipment and that the facilities will not incur a capital cost due to this requirement.

For this proposed rule, the EPA is adding affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $3,141 and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emissions limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. For this reason, we estimate no more than 1 or 2 such occurrences for all sources subject to subpart XXX over the 3-year period covered by this ICR. We expect to gather information on such events in the future and will revise this estimate as better information becomes available.

We estimate two regulated entities are currently subject to subpart XXX and will be subject to all proposed standards. The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart XXX (Ferroalloys Production) is estimated to be $384,000 per year. This includes 483 labor hours per year at a total labor cost of $37,000 per year, and total non-labor capital and operation and maintenance costs of $347,000 per year. This estimate includes performance tests, notifications,

reporting, and recordkeeping associated with the new requirements for front-end process vents and back-end process operations. The total burden for the Federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 48 hours per year at a total labor cost of $2,200 per year. Burden is defined at 35 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When these ICRs are approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in the final rules.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2010–0895. Submit any comments related to the ICR to the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after November 23, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by December 23, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. For this source category, which has the NAICS code 331112 (*i.e.,* Electrometallurgical ferroalloy product manufacturing), the SBA small business size standard is 750 employees according to the SBA small business standards definitions.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Neither of the companies affected by this rule is considered to be a small entity per the definition provided in this section.

*D. Unfunded Mandates Reform Act*

This proposed rule does not contain a Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The proposed rule would not result in expenditures of $100 million or more for state, local, and tribal governments, in aggregate, or the private sector in any 1 year. The proposed rule imposes no enforceable duties on any State, local or tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments nor does it impose obligations upon them.

*E. Executive Order 13132: Federalism*

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the facilities subject to this action are owned or operated by state governments, and, because no new requirements are being promulgated, nothing in this proposed rule will supersede State regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. The report, *Analysis of Socio-Economic Factors for Populations Living Near Ferroalloys Facilities,* shows that, prior to the implementation of the provisions included in this proposal, on a nationwide basis, there are approximately 26,000 people exposed to a cancer risk at or above one in one million and approximately 28,000 people exposed to a chronic noncancer TOSHI greater than 1 due to emissions from the source category. The percentages for all demographic groups, including children 18 years and younger, are similar to or lower than their respective nationwide percentages. Further, implementation of the provisions included in this proposal is expected to significantly reduce the number of at-risk people due to HAP emissions from these sources (from between 26,000 to 28,000 people to about 1,000), providing significant benefit to all the demographic groups in the at-risk population.

This proposed rule is expected to reduce environmental impacts for everyone, including children. This action proposes emissions limits at the levels based on MACT, as required by the CAA. Based on our analysis, we believe that this rule does not have a disproportionate impact on children.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of

early life exposure to manganese, lead, arsenic, nickel, or mercury.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a ''significant energy action'' as defined under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have significant adverse effect on the supply, distribution, or use of energy. This action will not create any new requirements and therefore no additional costs for sources in the energy supply, distribution, or use sectors.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes to use EPA Methods 1, 2, 3A, 3B, 4, 5, 5D, 9, 10, 26A, 30B, 316, CARB 429, SW–846 Method 3052, SW–846 Method 7471b and EPA water Method 1631E of 40 CFR Part 60, Appendix A. No applicable VCS were identified for EPA Methods 30B, 5D, 316, 1631E and CARB 429, SW–846 Method 3052, and SW–846 Method 7471b.

Two VCS were identified acceptable alternatives to EPA test methods for the purposes of this rule. The VCS standard ANSI/ASME PTC 19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses'' is an acceptable alternative to Method 3B. The VCS ASTM D7520–09, ''Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere'' is an acceptable alternative to Method 9 under specified conditions. The Agency identified 18 VCS as being potentially applicable to these methods cited in this rule. However, the EPA determined that the 18 candidate VCS would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. The 18 VCS and other information and conclusions, including the search and review results, are in the docket for this proposed rule. The EPA welcomes comments on this aspect of this proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

Under section 63.7(f) and section 63.8(f) of Subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the proposed rule.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has proposed that the current health risks posed by emissions from this source category are unacceptable. There are about 26,000 to 28,000 people nationwide that are currently subject to health risks which may not be considered neglible (*i.e.,* cancer risks greater than one in one million or chronic noncancer TOSHI greater than 1) due to emissions from this source category. The demographic makeup of this ''at-risk'' population is similar to the national distribution for all demographic groups. The proposed rule will reduce the number of people in this at-risk group from between 26,000–28,000 people to about 1,000 people. Based on this analysis, the EPA is proposing that the proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations.

**List of Subjects in 40 CFR Part 63**

Air pollution control, Environmental protection, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: November 4, 2011.

**Lisa P. Jackson,**

*Administrator.*

For the reasons stated in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Section 63.14 is amended by:

a. Adding paragraph (b)(69);

b. Revising paragraph (i)(1);

c. Revising paragraph (p)(6) and adding paragraphs (p)(8) and (p)(9); and

d. By adding paragraphs (r)(1) and (r)(2).

**§ 63.14 Incorporations by reference.**

(b) * * *

(69) ASTM D7520–09, ''Standard Test Method for Determining the Opacity in a Plume in an Outdoor Ambient Atmosphere,'' IBR approved for § 63.1625(b)(9).

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.1625(b)(3)(iii), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), 63.11410(j)(1)(iii), 63.11551(a)(2)(i)(C), table 5 to subpart DDDDD of this part, table 1 to subpart ZZZZZ of this part, and table 4 to subpart JJJJJJ of this part.

* * * * *

(p) * * *

(6) SW–846–7471B, Mercury in Solid Or Semisolid Waste (Manual Cold-Vapor Technique), Revision 2, February 2007, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for § 63.1625(b)(10), table 6 to subpart DDDDD of this part and table 5 to subpart JJJJJJ of this part.

* * * * *

(8) SW–846–Method 3052, Microwave Assisted Acid Digestion Of Siliceous

and Organically Based Matrices, Revision 0, December 1996, in EPA Publication No. SW–846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for § 63.1625(b)(10).

(9) Method 1631, Revision E: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry, August 2002 located at: *http://water.epa.gov/scitech/methods/cwa/metals/mercury/upload/2007_07_10_methods_;method_mercury_1631.pdf,* IBR approved for § 63.1625(b)(10).

(r) The following material is available from the California Air Resources Board (CARB), 1102 Q Street, Sacramento, California 95814, (*http://www.arb.ca.gov/testmeth/vol3/M_429.pdf*).

(1) Method 429, Determination of Polycyclic Aromatic Hydrocarbon (PAH) Emissions from Stationary Sources, Adopted September 1989, Amended July 1997, IBR approved for § 63.1625(b)(11).

(2) [Reserved]

* * * * *

## Subpart XXX—[Amended]

3. Section 63.1620 is added to read as follows:

### § 63.1620 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a new or existing ferromanganese and/or silicomanganese production facility that is a major source or is co-located at a major source of hazardous air pollutant emissions.

(b) You are subject to this subpart if you own or operate any of the following equipment as part of a ferromanganese or silicomanganese production facility:

(1) Open, semi-sealed, or sealed submerged arc furnace,

(2) Casting operations,

(3) Metal oxygen refining (MOR) process,

(4) Crushing and screening operations,

(5) Outdoor fugitive dust sources.

(c) A new affected source is any of the sources listed in paragraph (b) of this section for which construction or reconstruction commenced after November 23, 2011.

(d) Table 1 of this subpart specifies the provisions of subpart A of this part that apply to owners and operators of ferromanganese and silicomanganese production facilities subject to this subpart.

(e) If you are subject to the provisions of this subpart, you are also subject to title V permitting requirements under 40 CFR parts 70 or 71, as applicable.

(f) Emission standards in this subpart apply at all times.

4. Section 63.1621 is added to read as follows:

### § 63.1621 What are my compliance dates?

(a) Existing affected sources must be in compliance with the provisions specified in §§ 63.1620 through 63.1630 no later than [2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

(b) Affected sources in existence prior to November 23, 2011 must be in compliance with the provisions specified in §§ 63.1650 through 63.1661 by November 21, 2001 and until [2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE]. As of [2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], the provisions of §§ 63.1650 through 63.1661 cease to apply to affected sources in existence prior to November 23, 2011. The provisions of §§ 63.1650 through 63.1661 remain enforceable at a source for its activities prior to [2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

(c) If you own or operate a new affected source that commences construction or reconstruction after November 23, 2011, you must comply with the requirements of this subpart by [EFFECTIVE DATE OF FINAL RULE], or upon startup of operations, whichever is later.

5. Section 63.1622 is added to read as follows:

### § 63.1622 What definitions apply to this subpart?

Terms in this subpart are defined in the Clean Air Act (Act), in subpart A of this part, or in this section as follows:

*Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

*Bag leak detection system* means a system that is capable of continuously monitoring particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

*Building ventilation means* a system of ventilated ducts designed to place the shop building under negative pressure and to capture process fugitive emissions from the shop building.

*Capture system* means the collection of components used to capture the gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device or to the atmosphere. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

*Casting* means the period of time from when molten ferroalloy is removed from the tapping station until pouring into casting molds or beds is completed. This includes the following operations: pouring alloy from one ladle to another, slag separation, slag removal, and ladle transfer by crane, truck, or other conveyance.

*Crushing and screening equipment* means the crushers, grinders, mills, screens and conveying systems used to crush, size, and prepare for packing manganese-containing materials, including raw materials, intermediate products, and final products.

*Electric arc furnace* means any furnace where electrical energy is converted to heat energy by transmission of current between electrodes partially submerged in the furnace charge.

*Ladle treatment* means a post-tapping process including metal and alloy additions where chemistry adjustments are made in the ladle after furnace smelting to achieve a specified product.

*Local ventilation* means hoods and ductwork designed to capture process fugitive emissions close to the area where the emissions are generated (*e.g.,* tap hoods).

*Metal oxygen refining (MOR) process* means the reduction of the carbon content of ferromanganese through the use of oxygen.

*Outdoor fugitive dust source* means a stationary source from which hazardous air pollutant-bearing particles are discharged to the atmosphere due to wind or mechanical inducement such as vehicle traffic. Fugitive dust sources include plant roadways, yard areas, and outdoor material storage and transfer operations.

*Plant roadway* means any area at a ferromanganese and silicomanganese production facility that is subject to plant mobile equipment, such as fork lifts, front end loaders, or trucks, carrying manganese-bearing materials. Excluded from this definition are employee and visitor parking areas, provided they are not subject to traffic by plant mobile equipment.

*Primary emissions* means gases and emissions collected by hoods and ductwork located above an open furnace or under the cover of a semi-closed or sealed furnace.

*Process fugitive emissions source* means a source of hazardous air pollutant emissions that is associated with ferromanganese or silicomanganese production, but is not the primary exhaust stream from an electric arc furnace, MOR or crushing and screening equipment, and is not a fugitive dust source. Process fugitive sources include emissions that escape capture from the electric arc furnace, tapping operations, casting operations, ladle treatment, MOR or crushing or screening equipment.

*Shop building* means the building which houses one or more electric arc furnaces.

*Shutdown* means the cessation of operation of an affected source for any purpose.

*Startup* means the setting in operation of an affected source for any purpose.

*Tapping emissions* means the gases and emissions associated with removal of product from the electric arc furnace under normal operating conditions, such as removal of metal under normal pressure and movement by gravity down the spout into the ladle and filling the ladle.

*Tapping period* means the time from when a tap hole is opened until the time a tap hole is closed.

6. Section 63.1623 is added to read as follows:

**§ 63.1623 What are the emissions standards for new, reconstructed and existing facilities?**

(a) *Electric arc furnaces.* You must install, operate, and maintain a capture system that collects the emissions from each electric arc furnace (including charging, melting, and tapping operations and emissions from any vent stacks) and conveys the collected emissions to a control device for the removal of the pollutants specified in the emissions standards specified in paragraphs (a)(1) through (a)(6) of this section.

(1) *Particulate matter emissions.*

(i) You must not discharge exhaust gases (including primary and tapping emissions) containing particulate matter in excess of 9.3 milligrams per dry standard cubic meter (mg/dscm), corrected to 2 percent carbon dioxide ($CO_2$) into the atmosphere from any new or reconstructed electric arc furnace. This emission limit must be met by any furnace vent stacks.

(ii) You must not discharge exhaust gases (including primary and tapping emissions) containing particulate matter in excess of 24 mg/dscm, corrected to 2 percent $CO_2$ into the atmosphere from any existing electric arc furnace. This emission limit must be met by any furnace vent stacks.

(2) *Mercury emissions.* You must not discharge exhaust gases (including primary and tapping emissions) containing mercury emissions in excess of 16 μg/dscm, corrected to 2 percent $CO_2$ into the atmosphere from any new, reconstructed or existing electric arc furnace.

(3) *Polycyclic aromatic hydrocarbon emissions.* You must not discharge exhaust gases (including primary and tapping emissions) containing polycyclic aromatic hydrocarbon emissions in excess of 89 μg/dscm, corrected to 2 percent $CO_2$ into the atmosphere from any new, reconstructed or existing electric arc furnace.

(4) *Hydrochloric acid emissions.* You must not discharge exhaust gases (including primary and tapping emissions) containing hydrochloric acid emissions in excess of 809 μg/dscm, corrected to 2 percent $CO_2$ into the atmosphere from any new, reconstructed or existing electric arc furnace.

(5) *Formaldehyde emissions.* You must not discharge exhaust gases (including primary and tapping emissions) containing formaldehyde emissions in excess of 201 μg/dscm, corrected to 2 percent $CO_2$ into the atmosphere from any new, reconstructed or existing electric arc furnace.

(b) *Process fugitive emissions.*

(1) You must install, operate, and maintain a capture system that collects all of the process fugitive emissions from the shop building (including tapping, casting, ladle treatment and crushing and screening equipment process fugitives) at a negative pressure of at least 0.007 inches of water, and conveys the collected emissions to a control device. You must not discharge into the atmosphere emissions from the control device containing particulate matter in excess of 24 mg/dscm, corrected to 2 percent $CO_2$.

(2) You must not cause emissions exiting from a shop building, to exceed 10 percent opacity for more than one 6-minute period.

(3) As an alternative to meeting the requirements specified in paragraph (b)(1) of this section, you can elect to demonstrate compliance by meeting the requirements of paragraphs (b)(3)(i) through (b)(3)(ii) of this section.

(i) You must install compliance monitors on or near the plant boundary, at locations approved by the Administrator, to demonstrate that the manganese concentration in air is at all times maintained below a 10-sample rolling average value of 0.10 μg/m3 at each monitor.

(A) Samples must be collected every 6 days. All samples are 24-hr integrated samples.

(B) Calculate a 10-sample rolling average to demonstrate compliance with the action level specified in paragraph (b)(3)(i) of this section. Missed or invalidated samples must be made up only on the established site-specific 1-in 6-day schedule to include the required number of makeup samples to achieve a minimum of 10 valid samples).

(C) Collect particles in the PM10 size fraction at a set flow rate of 16.7 l/minute using a 47 mm Teflon filter.

(D) Conduct the analysis using an EPA method (such as compendium method IO–3.5) and ensure the manganese method detection limit (MDL) is no greater than 0.01 μg/m$^3$.

(E) All data, to include values below MDL, must be reported. Under no circumstances are data value substitutions (*e.g.,* ½ MDL) acceptable.

(ii)(A) The monitoring system must include at least two ambient monitors and at least one of these monitors must be in a location that is expected to have the highest air concentrations at or near the facility boundary based on ambient dispersion modeling or other methods approved by the Administrator.

(B) You must submit a written plan describing and explaining the basis for the design and adequacy of the compliance monitoring network, the sampling, analytical and quality assurance procedures and the justification for any data adjustments within 45 days after the effective date of this subpart.

(C) The Administrator at any time may require changes in or expansion of, the monitoring program, including additional sampling and more frequent sampling, or revisions to the analytical protocols and network design.

(c) *Local ventilation emissions.* If you operate local ventilation to capture tapping, casting, or ladle treatment emissions and direct them to a control device other than one associated with the electric arc furnace, you must not discharge into the atmosphere any captured emissions containing particulate matter in excess of 24 mg/dscm, corrected to 2 percent $CO_2$.

(d) *MOR process.* You must not discharge into the atmosphere from any new, reconstructed or existing MOR process exhaust gases containing particulate matter in excess of 3.9 mg/dscm, corrected to 2 percent $CO_2$.

(e) *Crushing and screening equipment.* You must not discharge into the atmosphere from any new,

reconstructed, or existing piece of equipment associated with crushing and screening exhaust gases containing particulate matter in excess of 13 mg/dscm.

(f) *Emissions Averaging Option.*

(1) As an alternative to meeting the emission standards specified in paragraphs (a)(1) through (a)(6) of this section on an electric arc furnace-specific basis, and if you have more than one existing electric arc furnace located at one or more contiguous properties, which are under common control of the same person (or persons under common control), you may demonstrate compliance by emission averaging among the existing electric arc furnaces, if your averaged emissions for such electric arc furnaces are equal to or less than the applicable emission limit.

(2) As an alternative to meeting the emission standard specified in paragraph (b)(1) of this section on a building ventilation control device-specific basis, and if you have more than one existing building ventilation control device located at one or more contiguous properties, which are under common control of the same person (or persons under common control), you may demonstrate compliance by emission averaging among the existing building ventilation control devices, if your averaged emissions for such building ventilation control devices are equal to or less than the applicable emission limit.

(3) As an alternative to meeting the emission standard specified in paragraph (e) of this section on a crushing and screening equipment control device-specific basis, and if you have more than one existing crushing and screening equipment control device located at one or more contiguous properties, which are under common control of the same person (or persons under common control), you may demonstrate compliance by emission averaging among the existing crushing or screening equipment control devices, if your averaged emissions for such crushing or screening equipment control devices are equal to or less than the applicable emission limit.

(g) The averaged emissions rate from the existing equipment specified in paragraph (f) of this section participating in the emissions averaging option must be in compliance with the emission standards specified in paragraphs (a), (b) and (e) of this section by the compliance date specified in § 63.1621. You must develop, and submit to the applicable regulatory authority for review and approval upon request, an implementation plan for emission averaging according to the following procedures and requirements in paragraphs (g)(1) through (g)(4) of this section.

(1) You must submit the implementation plan no later than 180 days before the date that the facility intends to demonstrate compliance using the emission averaging option.

(2) You must include the information contained in paragraphs (g)(2)(i) through (g)(2)(vii) of this section in your implementation plan for all emission sources included in an emissions average:

(i) The identification of all existing equipment specified in paragraph (f) of this section in the applicable averaging group, including for each either the applicable HAP emission level or the control technology installed as of [DATE 60 DAYS AFTER EFFECTIVE DATE OF THE FINAL RULE] and the date on which you are requesting emission averaging to commence;

(ii) A description of how you will comply with the monitoring procedures specified in § 63.1626 for each averaging group;

(iii) The specific control technology to be used for each piece of equipment specified in paragraph (f) of this section in the averaging group and the date of its installation or application;

(iv) The test plan for the measurement of particulate matter, hydrochloric acid, formaldehyde and mercury emissions, as applicable, in accordance with the requirements in § 63.1625 and the planned test dates to ensure that averaged units are tested concurrently or with minimal differences in the testing dates;

(v) The operating parameters to be monitored for each control system or device consistent with § 63.1626 and a description of how the operating limits will be determined;

(vi) If you request to monitor an alternative operating parameter pursuant to § 63.8, you must also include:

(A) A description of the parameter(s) to be monitored and an explanation of the criteria used to select the parameter(s); and

(B) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device; the frequency and content of monitoring, reporting, and recordkeeping requirements; and a demonstration, to the satisfaction of the applicable regulatory authority, that the proposed monitoring frequency is sufficient to represent control device operating conditions; and

(vii) A demonstration that compliance with each of the applicable emission limit(s) will be achieved under representative operating conditions.

(3) The regulatory authority shall review and approve or disapprove the plan according to the following criteria:

(i) Whether the content of the plan includes all of the information specified in paragraph (g)(2) of this section; and

(ii) Whether the plan presents sufficient information to determine that compliance will be achieved and maintained.

(4) The applicable regulatory authority shall not approve an emission averaging implementation plan containing any of the following provisions:

(i) Any averaging between emissions of differing pollutants or between differing sources; or

(ii) The inclusion of any emission source other than an existing unit in the same source category.

(h) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

7. Section 63.1624 is added to read as follows:

**§ 63.1624 What are the operational and work practice standards for new, reconstructed and existing facilities?**

(a) *Process fugitives sources.*

(1) If you are complying with the standard specified in § 63.1623(b)(1), you must prepare and operate according to a process fugitives ventilation plan for each shop building.

(2) You prepare a process fugitives ventilation schematic for each shop building indicating duct size and location, enclosure and hood sizes and locations, control device types, size and locations, and exhaust locations should be developed. The process fugitives ventilation system schematic must be annotated with the location and size of each shop building air supply unit and each shop building exhaust fan.

(3) You must conduct a baseline survey to establish actual air flow and static pressure values before and after each emission control device and in each branch of the process ventilation system after each enclosure or hood. You must also determine actual air flow

and static pressure values for each shop building air supply and exhaust device. You must demonstrate that air supply and exhaust are balanced.

(4) You must repeat the baseline survey at least every 5 years or following significant ventilation system changes.

(5) The process fugitives ventilation plan must contain a description of each enclosure and hood with explanation demonstrating that adequate control of the process source is being achieved or actions planned to improve performance.

(6) The process fugitives ventilation plan must be adequate to ensure that the building is continuously maintained at a negative pressure of at least 0.007 inches of water.

(7) The process fugitives ventilation plan must identify critical maintenance actions, schedule to complete, and verification record of completion.

(8) You must submit a copy of the process fugitives ventilation plan to the designated permitting authority on or before the applicable compliance date for the affected source as specified in § 63.1621. The requirement for you to operate the facility according to a written process fugitives ventilation plan must be incorporated in the operating permit for the facility that is issued by the designated permitting authority under part 70 of this chapter.

(b) *Outdoor fugitive dust sources.*

(1) You must prepare, and at all times operate according to, an outdoor fugitive dust control plan that describes in detail the measures that will be put in place to control outdoor fugitive dust emissions from the individual fugitive dust sources at the facility.

(2) You must submit a copy of the outdoor fugitive dust control plan to the designated permitting authority on or before the applicable compliance date for the affected source as specified in § 63.1621. The requirement for you to operate the facility according to a written outdoor fugitive dust control plan must be incorporated in the operating permit for the facility that is issued by the designated permitting authority under part 70 of this chapter.

(3) You are permitted to use existing manuals that describe the measures in place to control outdoor fugitive dust sources required as part of a State implementation plan or other federally enforceable requirement for particulate matter to satisfy the requirements of paragraph (b)(1) of this section.

8. Section 63.1625 is added to read as follows:

**§ 63.1625 What are the performance test and compliance requirements for new, reconstructed and existing facilities?**

(a) *Performance testing.*

(1) All performance tests must be conducted according to the requirements in § 63.7 of subpart A.

(2) Each performance test must consist of three separate and complete runs using the applicable test methods.

(3) Each run must be conducted under conditions that are representative of normal process operations.

(4) Performance tests conducted on air pollution control devices serving electric arc furnaces must be conducted such that at least one tapping period, or at least 20 minutes of a tapping period, whichever is less, is included in at least two of the three runs. The sampling time for each run must be at least as long as three times the average tapping period of the tested furnace, but no less than 60 minutes.

(5) You must conduct the performance tests specified in paragraph (c) of this section under such conditions as the Administrator specifies based on representative performance of the affected source for the period being tested. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(b) Test methods. The following test methods in appendices of part 60 or 63 of this chapter or as specified elsewhere must be used to determine compliance with the emission standards.

(1) Method 1 of Appendix A–1 of 40 CFR part 60 to select the sampling port location and the number of traverse points.

(2) Method 2 of Appendix A–1 of 40 CFR part 60 to determine the volumetric flow rate of the stack gas.

(3)(i) Method 3A or 3B of Appendix A–2 of 40 CFR part 60 (with integrated bag sampling) to determine the outlet stack and inlet oxygen and $CO_2$ content.

(ii) You must measure $CO_2$ concentrations at both the inlet and outlet of the positive pressure fabric filter in conjunction with the pollutant sampling in order to correct pollutant concentrations for dilution and to determine isokinetic sampling rates.

(iii) As an alternative to EPA Reference Method 3B, ASME PTC–19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses'' may be used (incorporated by reference, see 40 CFR 63.14).

(4) Method 4 of Appendix A–3 of 40 CFR part 60 to determine the moisture content of the stack gas.

(5)(i) Method 5 of Appendix A–3 of 40 CFR part 60 to determine the particulate matter concentration of the stack gas for negative pressure baghouses and positive pressure baghouses with stacks.

(ii) Method 5D of Appendix A–3 of 40 CFR part 60 to determine particulate matter concentration and volumetric flow rate of the stack gas for positive pressure baghouses without stacks.

(iii) The sample volume for each run must be a minimum of 4.0 cubic meters (141.2 cubic feet). For Method 5 testing only, you may choose to collect less than 4.0 cubic meters per run provided that the filterable mass collected (*e.g.,* net filter mass plus mass of nozzle, probe and filter holder rinses) is equal to or greater than 10 mg. If the total mass collected for two of three of the runs is less than 10 mg, you must conduct at least one additional test run that produces at least 10 mg of filterable mass collected (*i.e.,* at a greater sample volume). Report the results of all test runs.

(6) Method 30B of Appendix A–8 of 40 CFR part 60 to measure mercury. Apply the minimum sample volume determination procedures as per the method.

(7)(i) Method 26A of Appendix A–8 of 40 CFR part 60 to determine outlet stack or inlet hydrochloric acid concentration.

(ii) Collect a minimum volume of 2 cubic meters.

(8)(i) Method 316 of Appendix A of 40 CFR part 63 to determine outlet stack or inlet formaldehyde.

(ii) Collect a minimum volume of 1.0 cubic meter.

(9) Method 9 of Appendix A–4 of 40 CFR part 60 to determine opacity. ASTM D7520–09, ''Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere'' may be used (incorporated by reference, see 40 CFR 63.14) with the following conditions:

(i) During the digital camera opacity technique (DCOT) certification procedure outlined in Section 9.2 of ASTM D7520–09, you or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees and mixed backgrounds (clouds and/or a sparse tree stand).

(ii) You must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in Section 8.1 of ASTM D7520–09.

(iii) You must follow the recordkeeping procedures outlined in § 63.10(b)(1) for the DCOT certification, compliance report, data sheets and all

raw unaltered JPEGs used for opacity and certification determination.

(iv) You or the DCOT vendor must have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of any one reading and the average error must not exceed 7.5 percent opacity.

(v) Use of this approved alternative does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software and operator in accordance with ASTM D7520–09 and these requirements is on the facility, DCOT operator and DCOT vendor.

(10) Methods to determine the mercury content of manganese ore including a total metals digestion technique, SW–846 Method 3052, and a mercury specific analysis method, SW–846 Method 7471b (Cold Vapor AA) or Water Method 1631E (Cold Vapor Atomic Fluorescence).

(11) California Air Resources Board (CARB) Method 429, Determination of Polycyclic Aromatic Hydrocarbon (PAH) Emissions from Stationary Sources to determine total PAH emissions. The method is available from California Resources Board, 1102 Q Street, Sacramento, California 95814, (*http://www.arb.ca.gov/testmeth/vol3/M_429.pdf*).

(12) The owner or operator may use alternative measurement methods approved by the Administrator following the procedures described in § 63.7(f) of subpart A.

(c) *Compliance demonstration with the emission standards.*

(1) You must conduct an initial performance test for air pollution control devices or vent stacks subject to § 63.1623(a) through (e) to demonstrate compliance with the applicable emission standards.

(2) You must conduct performance tests every 5 years for the air pollution control devices and vent stacks associated with the electric arc furnaces and furnace building ventilation systems. The results of these periodic tests will be used to demonstrate compliance with the emission standards in § 63.1623(a)(1) through (a)(5), (b)(1) and (b)(2), as applicable.

(3) For any air pollution control device that serves tapping emissions combined with non-furnace emissions, such as the MOR process, or equipment associated with crushing and screening, casting or ladle treatment, you must conduct a performance test at least every 5 years. The results of these tests will be used to demonstrate compliance with the emission standards in § 63.1623(c) through (e), as applicable.

(4) Compliance is demonstrated for all sources performing emissions tests if the average concentration for the three runs comprising the performance test does not exceed the standard or if you successfully comply with the emission averaging option specified in § 63.1623(f).

(5) *Operating Limits.* You must establish parameter operating limits according to paragraphs (c)(5)(i) through (c)(5)(vi) of this section. Unless otherwise specified, compliance with each established operating limit shall be demonstrated for each 24-hour operating day.

(i) For a wet particulate matter scrubber, you must establish the minimum liquid flow rate and pressure drop as your operating limits during the three-run performance test. If you use a wet particulate matter scrubber and you conduct separate performance tests for particulate matter, you must establish one set of minimum liquid flow rate and pressure drop operating limits. If you conduct multiple performance tests, you must set the minimum liquid flow rate and pressure drop operating limits at the highest minimum hourly average values established during the performance tests.

(ii) For a wet acid gas scrubber, you must establish the minimum liquid flow rate and pH, as your operating limits during the three-run performance test. If you use a wet acid gas scrubber and you conduct separate performance tests for hydrochloric acid, you must establish one set of minimum liquid flow rate and pH operating limits. If you conduct multiple performance tests, you must set the minimum liquid flow rate and pH operating limits at the highest minimum hourly average values established during the performance tests.

(iii) For a dry scrubber, dry sorbent injection (DSI) system or activated carbon injection system, you must establish the minimum hourly average sorbent or activated carbon injection rate, as measured during the three-run performance test as your operating limit.

(iv) For emission sources with fabric filters that choose to demonstrate continuous compliance through bag leak detection systems you must install a bag leak detection system according to the requirements in § 63.1626(d), and you must set your operating limit such that the sum duration of bag leak detection system alarms does not exceed 5 percent of the process operating time during a 6-month period.

(v) If you choose to demonstrate continuous compliance through a particulate matter CEMS, you must determine an operating limit (particulate matter concentration in mg/dscm) during performance testing for initial particulate matter compliance. The operating limit will be the average of the PM filterable results of the three Method 5 or Method 5D of Appendix A–3 of 40 CFR part 60 performance test runs. To determine continuous compliance, the hourly average PM concentrations will be averaged on a rolling 30 operating day basis. Each 30 operating day average would have to meet the PM operating limit.

(v) For any furnace stack, you must establish a weighted average mercury concentration of the manganese ore being used in the furnace during the emission test. Collect a sample of all ores used in the furnace and prepare a weighted average based on the relative mass of each type of ore used in the furnace charge.

(d) *Compliance demonstration with shop building opacity standards.*

(1)(i) If you are subject to § 63.1623(b)(2), you must conduct initial opacity observations of the shop building to demonstrate compliance with the applicable opacity standards according to § 63.6(h)(5), which addresses the conduct of opacity or visible emission observations.

(ii) You must conduct the opacity observations according to EPA Method 9 of 40 CFR part 60, Appendix A–4, for a minimum of 60 minutes to include at one, or at least 20 minutes of a tapping period, whichever is less, in at least two of the three runs to coincide with each performance test run of the associated control device.

(iii) Repeat this opacity observation at least every 5 years during the periodic performance tests required pursuant to paragraph (c)(2) of this section.

(2)(i) When demonstrating initial compliance with the shop building opacity standard, as required by paragraph (d)(1) of this section, you must simultaneously establish parameter values for one of the following: The capture system fan motor amperes and all capture system damper positions, the total volumetric flow rate to the air pollution control device and all capture system damper positions, or volumetric flow rate through each separately ducted hood that comprises the capture system.

(ii) You may petition the Administrator to reestablish these parameters whenever you can demonstrate to the Administrator's satisfaction that the electric arc furnace operating conditions upon which the

parameters were previously established are no longer applicable. The values of these parameters determined during the most recent demonstration of compliance must be maintained at the appropriate level for each applicable period.

(iii) You will demonstrate compliance by installing, operating, and maintaining a digital differential pressure device that shows you are maintaining the shop building under negative pressure to at least 0.007 inches of water.

(3) You will demonstrate continuing compliance with the opacity standards by following the monitoring requirements specified in § 63.1626(h) and the reporting and recordkeeping requirements specified in § 63.1629(b)(5).

(e) *Compliance demonstration with the operational and work practice standards.*

(1) *Process fugitives sources.* You will demonstrate compliance by developing and maintaining a process fugitives ventilation plan, by reporting any deviations from the plan and by taking necessary corrective actions to correct deviations or deficiencies.

(2) *Outdoor fugitive dust sources.* You will demonstrate compliance by developing and maintaining an outdoor fugitive dust control plan, by reporting any deviations from the plan and by taking necessary corrective actions to correct deviations or deficiencies.

(3) *Baghouses equipped with bag leak detection systems.* You will demonstrate compliance with the bag leak detection system requirements by developing analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 60.57c(h).

9. Section 63.1626 is added to read as follows:

**§ 63.1626 What monitoring requirements must I meet?**

(a) *Baghouse Monitoring.* You must prepare, and at all times operate according to, a standard operating procedures manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses (fabric filters or cartridge filters) that are used to control process vents, process fugitive, or outdoor fugitive dust emissions from any source subject to the emissions standards in § 63.1623, including those used to control emissions from building ventilation.

(b) You must submit the standard operating procedures manual for baghouses required by paragraph (a) of this section to the Administrator or delegated authority for review and approval.

(c) Unless the baghouse is equipped with a bag leak detection system, the procedures that you specify in the standard operating procedures manual for inspections and routine maintenance must, at a minimum, include the requirements of paragraphs (c)(1) and (c)(2) of this section.

(1) You must observe the baghouse outlet on a daily basis for the presence of any visible emissions.

(2) In addition to the daily visible emissions observation, you must conduct the following activities:

(i) Weekly confirmation that dust is being removed from hoppers through visual inspection, or equivalent means of ensuring the proper functioning of removal mechanisms.

(ii) Daily check of compressed air supply for pulse-jet baghouses.

(iii) An appropriate methodology for monitoring cleaning cycles to ensure proper operation.

(iv) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means.

(v) Quarterly visual check of bag tension on reverse air and shaker-type baghouses to ensure that the bags are not kinked (kneed or bent) or lying on their sides. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices.

(vi) Quarterly confirmation of the physical integrity of the baghouse structure through visual inspection of the baghouse interior for air leaks.

(vii) Semiannual inspection of fans for wear, material buildup, and corrosion through visual inspection, vibration detectors, or equivalent means.

(d) *Bag leak detection system.*

(1) For each baghouse used to control emissions from an electric arc furnace or building ventilation system, you must install, operate, and maintain a bag leak detection system according to paragraphs (d)(2) through (d)(4) of this section, unless a system meeting the requirements of paragraph (i) of this section, for a CEMS and continuous emissions rate monitoring system, is installed for monitoring the concentration of particulate matter. You may choose to install, operate and maintain a bag leak detection system for any other baghouse in operation at the facility according to paragraphs (d)(2) through (d)(4) of this section.

(2) The procedures you specified in the standard operating procedures manual for baghouse maintenance must include, at a minimum, a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(3) Each bag leak detection system must meet the specifications and requirements in paragraphs (d)(3)(i) through (d)(3)(viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1.0 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings.

(iii) The bag leak detection system must be equipped with an alarm system that will alarm when an increase in relative particulate loadings is detected over a preset level.

(iv) You must install and operate the bag leak detection system in a manner consistent with the guidance provided in ''Office of Air Quality Planning and Standards (OAQPS) Fabric Filter Bag Leak Detection Guidance'' EPA–454/R–98–015, September 1997 (incorporated by reference) and the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system.

(v) The initial adjustment of the system must, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time.

(vi) Following initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the approved standard operating procedures manual required under paragraph (a) of this section. You cannot increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless such adjustment follows a complete baghouse inspection that demonstrates that the baghouse is in good operating condition.

(vii) You must install the bag leak detector downstream of the baghouse.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(4) You must include in the standard operating procedures manual required by paragraph (a) of this section a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan must include, at a minimum, the procedures that you will use to determine and record the time and cause of the alarm as well as

the corrective actions taken to minimize emissions as specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this section.

(i) The procedures used to determine the cause of the alarm must be initiated within 30 minutes of the alarm.

(ii) The cause of the alarm must be alleviated by taking the necessary corrective action(s) that may include, but not be limited to, those listed in paragraphs (d)(4)(i)(A) through (d)(4)(i)(F) of this section.

(A) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions.

(B) Sealing off defective bags or filter media.

(C) Replacing defective bags or filter media, or otherwise repairing the control device.

(D) Sealing off a defective baghouse compartment.

(E) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(F) Shutting down the process producing the particulate emissions.

(e) If you use a wet particulate matter scrubber, you must collect the pressure drop and liquid flow rate monitoring system data according to § 63.1629, reduce the data to 24-hour block averages and maintain the 24-hour average pressure drop and liquid flow-rate at or above the operating limits established during the performance test according to § 63.1625(c)(5)(i).

(f) [Reserved]

(g) If you use a dry scrubber, DSI sorbent injection or carbon injection, you must collect the sorbent or carbon injection rate monitoring system data for the dry scrubber, DSI or ACI according to § 63.1629, reducing the data to 24-hour block averages; and maintain the 24-hour average sorbent or carbon injection rate at or above the operating limit established during the performance test according to § 63.1625(c)(5)(iii).

(h) *Shop building opacity.* In order to demonstrate continuous compliance with the opacity standards in § 63.1623, you must comply with one of the monitoring options in paragraphs (h)(1), (h)(2), (h)(3) or (h)(8) of this section. The selected option must be consistent with that selected during the initial performance test described in § 63.1625(d)(2). Alternatively, you may use the provisions of § 63.8(f) to request approval to use an alternative monitoring method.

(1) You must check and record the control system fan motor amperes and capture system damper positions once per shift.

(2) You must install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate through each separately ducted hood.

(3) You must install, calibrate, and maintain a monitoring device that continuously records the volumetric flow rate at the inlet of the air pollution control device and check and record the capture system damper positions once per shift.

(4) The flow rate monitoring devices must meet the following requirements:

(i) Be installed in an appropriate location in the exhaust duct such that reproducible flow rate monitoring will result.

(ii) Have an accuracy ± 10 percent over its normal operating range and be calibrated according to the manufacturer's instructions.

(5) The Administrator may require you to demonstrate the accuracy of the monitoring device(s) relative to Methods 1 and 2 of Appendix A–1 of part 60 of this chapter.

(6) Failure to maintain the appropriate capture system parameters (fan motor amperes, flow rate, and/or damper positions) establishes the need to initiate corrective action as soon as practicable after the monitoring excursion in order to minimize excess emissions.

(7) You must install, operate, and maintain a digital differential pressure monitoring system to continuously monitor each total enclosure as described in paragraphs (h)(7)(i) through (h)(7)(v) of this section.

(i) You must install and maintain a minimum of one building digital differential pressure monitoring system at each of the following three walls in the shop building:

(A) The leeward wall.

(B) The windward wall.

(C) An exterior wall that connects the leeward and windward wall at a location defined by the intersection of a perpendicular line between a point on the connecting wall and a point on its furthest opposite exterior wall, and intersecting within plus or minus ten meters of the midpoint of a straight line between the two other monitors specified. The midpoint monitor must not be located on the same wall as either of the other two monitors.

(ii) The digital differential pressure monitoring systems must be certified by the manufacturer to be capable of measuring and displaying negative pressure in the range of 0.01 to 0.2 mm mercury (0.005 to 0.11 inches of water) with a minimum accuracy of plus or minus 0.001 mm mercury (0.0005 inches of water).

(iii) You must equip each digital differential pressure monitoring system with a continuous recorder.

(iv) You must calibrate each digital differential pressure monitoring system in accordance with manufacturer's specifications at least once every 12 calendar months or more frequently if recommended by the manufacturer.

(v) You must equip the digital differential pressure monitoring system with a backup, uninterruptible power supply to ensure continuous operation of the monitoring system during a power outage.

(8) If you comply with the requirements specified in § 63.1623(b)(3), you must install, operate and maintain a continuous monitoring system for the measurement of manganese concentrations in air as specified in paragraphs (h)(8)(i) through (h)(8)(v) of this section.

(i) You must operate a minimum of two compliance monitors sufficient in location and frequency of sample collection to detect expected maximum concentrations of manganese in air due to emissions from the affected source(s) in accordance with a written plan as described in paragraph (h)(8)(ii) of this section and approved by the Administrator. The plan must include descriptions of the sampling and analytical methods used. At least one 24-hour sample must be collected from each monitor every 6 days. All records pertaining to the implementation and results of the compliance monitoring shall be kept on-site for a period of no less than 5 years from the date of generation of the record.

(ii) You must submit a written plan describing and explaining the basis for the design and adequacy of the compliance monitoring network, the sampling, sample handling and custody, analytical procedures, quality assurance procedures, recordkeeping procedures and any other related procedures, and the justification for any seasonal, background, or other data adjustments within [45 DAYS AFTER EFFECTIVE DATE OF FINAL RULE].

(iii) The Administrator at any time may require changes in, or expansion of, the monitoring program, including additional sampling and, more frequent sampling, revisions to the analytical protocols and network design.

(iv) If all rolling 10-sample average concentrations of manganese in air measured by the compliance monitoring system are less than 50 percent of the manganese concentration limits specified in § 63.1623(b)(3)(i) for 3 consecutive years, you may submit a proposed revised plan to reduce the monitoring sampling and analysis

frequency to the Administrator for review. If approved by the Administrator, you may adjust your monitoring accordingly.

(v) For any subsequent period, if any rolling 10-sample average manganese concentration in air measured at any monitor in the monitoring system exceeds 50 percent of the concentration limits specified in § 63.1623(b)(3), you must resume monitoring pursuant to paragraph (h)(8)(i)(A) of this section at all monitors until another 3 consecutive years of manganese concentration measurements is demonstrated to be less than 50 percent of the manganese concentration limits specified in § 63.1623(b)(3).

(i) *Furnace Capture System.* You must perform monthly inspections of the equipment that is important to the performance of the furnace capture system, including capture of both primary and tapping emissions. This inspection must include an examination of the physical condition of the equipment (*e.g.,* has hood location been changed or obstructed because of contact with cranes or ladles), to include detecting holes in ductwork or hoods, flow constrictions in ductwork due to dents or accumulated dust, and operational status of flow rate controllers (pressure sensors, dampers, damper switches, *etc.*). Any deficiencies must be recorded and proper maintenance and repairs performed.

(j) *Requirements for sources using CMS.* If you demonstrate compliance with any applicable emissions limit through use of a continuous monitoring system (CMS), where a CMS includes a continuous parameter monitoring system (CPMS) as well as a continuous emissions monitoring system (CEMS), you must develop a site-specific monitoring plan and submit this site-specific monitoring plan, if requested, at least 60 days before your initial performance evaluation (where applicable) of your CMS. Your site-specific monitoring plan must address the monitoring system design, data collection, and the quality assurance and quality control elements outlined in this section and in § 63.8(d). You must install, operate, and maintain each CMS according to the procedures in your approved site-specific monitoring plan. Using the process described in § 63.8(f)(4), you may request approval of monitoring system quality assurance and quality control procedures alternative to those specified in paragraphs (j)(1) through (j)(6) of this section in your site-specific monitoring plan.

(1) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer and data acquisition and calculations;

(2) Sampling interface location such that the monitoring system will provide representative measurements;

(3) Equipment performance checks, system accuracy audits, or other audit procedures;

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1) and (c)(3); and

(5) Conditions that define a continuous monitoring system that is out of control consistent with § 63.8(c)(7)(i) and for responding to out of control periods consistent with § 63.8(c)(7)(ii) and (c)(8) or Appendix A to this subpart, as applicable.

(6) Ongoing recordkeeping and reporting procedures in accordance with provisions in § 63.10(c), (e)(1) and (e)(2)(i) and Appendix A to this subpart, as applicable.

(k) If you have an operating limit that requires the use of a CPMS, you must install, operate, and maintain each continuous parameter monitoring system according to the procedures in paragraphs (k)(1) through (k)(7) of this section.

(1) The continuous parameter monitoring system must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four successive cycles of operation to have a valid hour of data.

(2) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments), you must operate the CMS at all times the affected source is operating. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(3) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other required data collection periods in assessing the operation of the control device and associated control system.

(4) Except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required quality monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments), failure to collect required data is a deviation of the monitoring requirements.

(5) You must conduct other CPMS equipment performance checks, system accuracy audits, or other audit procedures specified in your site-specific monitoring plan at least once every 12 months.

(6) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(7) You must record the results of each inspection, calibration, and validation check.

(l) *CPMS for measuring gaseous flow.*

(1) Use a flow sensor with a measurement sensitivity of 5 percent of the flow rate or 10 cubic feet per minute, whichever is greater,

(2) Check all mechanical connections for leakage at least every month, and

(3) Perform a visual inspection at least every 3 months of all components of the flow CPMS for physical and operational integrity and all electrical connections for oxidation and galvanic corrosion if your flow CPMS is not equipped with a redundant flow sensor.

(m) *CPMS for measuring liquid flow.*

(1) Use a flow sensor with a measurement sensitivity of 2 percent of the flow rate and

(2) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(n) *CPMS for measuring pressure.*

(1) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion and

(2) Use a gauge with a minimum tolerance of 1.27 centimeters of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(3) Perform checks at least once each process operating day to ensure pressure measurements are not obstructed (*e.g.,* check for pressure tap pluggage daily).

(o) *CPMS measuring flow of sorbent or carbon (e.g., weigh belt, weigh hopper, or hopper flow measurement device).* Install and calibrate the device in accordance with manufacturer's procedures and specifications.

(p) *CPMS for measuring pH.*

(1) Ensure the sample is properly mixed and representative of the fluid to be measured.

(2) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(q) *Particulate Matter CEMS.* If you are using a CEMS to measure particulate matter emissions to meet requirements of this subpart, you must install, certify, operate, and maintain the particulate matter CEMS as specified in paragraphs (q)(1) through (q)(4) of this section.

(1) You must conduct a performance evaluation of the PM CEMS according to the applicable requirements of § 60.13, and Performance Specification 11 at 40 CFR part 60, Appendix B of this chapter.

(2) During each PM correlation testing run of the CEMS required by Performance Specification 11 at 40 CFR part 60, Appendix B of this chapter, PM and oxygen (or carbon dioxide) collect data concurrently (or within a 30- to 60-minute period) by both the CEMS and by conducting performance tests using Method 5 or 5D at 40 CFR part 60, Appendix A–3 or Method 17 at 40 CFR part 60, Appendix A–6 of this chapter.

(3) Perform quarterly accuracy determinations and daily calibration drift tests in accordance with Procedure 2 at 40 CFR part 60, Appendix F of this chapter. Relative Response Audits must be performed annually and Response Correlation Audits must be performed every 3 years.

(4) Within 60 days after the date of completing each CEMS relative accuracy test audit or performance test conducted to demonstrate compliance with this subpart, you must submit the relative accuracy test audit data and performance test data to the EPA by successfully submitting the data electronically into the EPA's Central Data Exchange by using the Electronic Reporting Tool (see *http://www.epa.gov/ttnchie1/ert/*).

*(r) Ore Sampling Requirements.*

(1) Following completion of the initial compliance demonstration where you established a weighted average mercury concentration of the manganese ore being used in the furnace during the emission test, you must determine the weighted average mercury concentration of the manganese ores used in the process on a monthly basis. If you introduce a new type of ore, you must analyze the sample according the methods specified in § 63.1625(b)(10) and factor the results into your updated weighted average mercury concentration.

(2) If the weighted average mercury concentration is more than 10 percent higher than the weighted average operating limit, and you are operating an activated carbon injection system, you must reassess the activated carbon injection rate and revise the rate according to procedures established in your CMS monitoring plan.

(3) If the weighted average mercury concentration is more than 10 percent higher than the weighted average operating limit, and you are not operating an activated carbon injection system, you must retest the control device within 30 days to demonstrate compliance with the mercury emission limit and establish a new weighted average mercury concentration and associated activated carbon injection rate.

10. Section 63.1627 is added to read as follows:

**§ 63.1627 What is an affirmative defense for exceedence of an emissions limit during malfunction?**

In response to an action to enforce the standards set forth in paragraph § 63.1623 you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) *Affirmative Defense.* To establish the affirmative defense in any action to enforce such a limit, you must meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner; and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) *Notification.*

(1) If you experience an exceedence of the facilities' emission limit(s) during a malfunction, you must notify the EPA Administrator by telephone or facsimile (Fax) transmission as soon as possible, but no later than two (2) business days after the initial occurrence of the malfunction, if you wish to avail yourself of an affirmative defense to civil penalties for that malfunction.

(2) You must also submit a written report to the EPA Administrator, within 45 days of the initial occurrence of the exceedence of the standard in § 63.1623, to demonstrate, with all necessary supporting documentation, that you have met the requirements set forth in paragraph (a) of this section.

(3) You may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45-day period. Until a request for an extension has been approved by the Administrator, you are subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedances.

11. Section 63.1628 is added to read as follows:

**§ 63.1628 What notification requirements must I meet?**

(a) You must comply with all of the notification requirements of § 63.9 of subpart A, General Provisions.

Electronic notifications are encouraged when possible.

(b)(1) You must submit the process fugitives ventilation plan required under § 63.1624(a), the outdoor fugitive dust control plan required under § 63.1624(b), the site-specific monitoring plan for CMS required under § 63.1626(j), the standard operating procedures manual for baghouses required under § 63.1626(a) and the manganese monitoring alternative plan required under § 63.1626(h)(8) to the Administrator or delegated authority along with a notification that you are seeking review and approval of these plans and procedures. You must submit this notification no later than [*1 YEAR AFTER EFFECTIVE DATE OF FINAL RULE*]. For sources that commenced construction or reconstruction after [*EFFECTIVE DATE OF FINAL RULE*], you must submit this notification no later than 180 days before startup of the constructed or reconstructed ferromanganese or silicomanganese production facility. For an affected source that has received a construction permit from the Administrator or delegated authority on or before [*EFFECTIVE DATE OF FINAL RULE*], you must submit this notification no later than [*1 YEAR AFTER EFFECTIVE DATE OF FINAL RULE*].

(2) The plans and procedures documents submitted as required under paragraph (b)(1) of this section must be submitted to the Administrator in electronic format for review and approval of the initial submittal and whenever an update is made to the procedure.

12. Section 63.1629 is added to read as follows:

**§ 63.1629 What recordkeeping and reporting requirements must I meet?**

(a) You must comply with all of the recordkeeping and reporting requirements specified in § 63.10 of the General Provisions that are referenced in Table 1 to this subpart.

(1) Records must be maintained in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). However, electronic recordkeeping and reporting is encouraged, and required for some records and reports.

(2) Records must be kept on site for at least 2 years after the date of occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1).

(b) You must maintain, for a period of 5 years, records of the information listed in paragraphs (b)(1) through (b)(13) of this section.

(1) Electronic records of the bag leak detection system output.

(2) An identification of the date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the corrective actions taken, and the date and time the cause of the alarm was corrected.

(3) All records of inspections and maintenance activities required under § 63.1626(a) as part of the practices described in the standard operating procedures manual for baghouses required under § 63.1626(c).

(4) Electronic records of the pressure drop and water flow rate values for wet scrubbers used to control particulate matter emissions as required in § 63.1626(e), identification of periods when the 1-hour average pressure drop and water flow rate values below the established minimum established and an explanation of the corrective actions taken.

(5) Electronic records of the shop building capture system monitoring required under § 63.1626(h)(1) through (h)(3), (h)(7) and (h)(8), as applicable, identification of periods when the capture system parameters were not maintained or the manganese concentration exceeded the rolling 10-sample concentration level as required under § 63.1623(b)(3) and an explanation of the corrective actions taken.

(6) Records of the results of monthly inspections of the furnace capture system required under § 63.1626(i).

(7) Electronic records of the continuous flow monitors or pressure monitors required under § 63.1626(j) and (k) and an identification of periods when the flow rate or pressure was not maintained as required in § 63.1626(e).

(8) Electronic records of the output of any CEMS installed to monitor particulate matter emissions meeting the requirements of § 63.1626(j).

(9) Records of the total sorbent injection rate required under § 63.1626(k).

(10) Records of the occurrence and duration of each startup and/or shutdown.

(11) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment.

(12) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1623(g), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(13) Records that explain the periods when the procedures outlined in the process fugitives ventilation plan required under § 63.1624(a), the fugitives dust control plan required under § 63.1624(b), the site-specific monitoring plan for CMS required under § 63.1626(j), the standard operating procedures manual for baghouses required under § 63.1626(a) and the manganese monitoring alternative plan required under § 63.1626(h)(8) were not followed and the corrective actions taken.

(c) You must comply with all of the reporting requirements specified in § 63.10 of the General Provisions that are referenced in Table 1 to this subpart.

(1) You must submit reports no less frequently than specified under § 63.10(e)(3) of the General Provisions.

(2) Once a source reports a violation of the standard or excess emissions, you must follow the reporting format required under § 63.10(e)(3) until a request to reduce reporting frequency is approved by the Administrator.

(d) In addition to the information required under the applicable sections of § 63.10, you must include in the reports required under paragraph (c) of this section the information specified in paragraphs (d)(1) through (d)(8) of this section.

(1) Reports that explain the periods when the procedures outlined in the process fugitives ventilation plan required under § 63.1624(a), the fugitives dust control plan required under § 63.1624(b), the site-specific monitoring plan for CMS required under § 63.1626(j), the standard operating procedures manual for baghouses required under § 63.1626(a) and the manganese monitoring alternative plan required under § 63.1626(h)(8) were not followed and the corrective actions taken.

(2) Reports that identify the periods when the average hourly pressure drop or flow rate of venturi scrubbers used to control particulate emissions dropped below the levels established in § 63.1626(e) and an explanation of the corrective actions taken.

(3) *Bag leak detection system.* Reports including the following information:

(i) Records of all alarms.

(ii) Description of the actions taken following each bag leak detection system alarm.

(4) Reports of the shop building capture system monitoring required under § 63.1626(h)(1) through (h)(3), (h)(7) and (h)(8), as applicable, identification of periods when the capture system parameters were not

maintained or the manganese concentration exceeded the rolling 10-sample concentration level as required under § 63.1623(b)(3) and an explanation of the corrective actions taken.

(5) Reports of the results of monthly inspections of the furnace capture system required under § 63.1626(g).

(6) Reports of the CPMS required under § 63.1626, an identification of periods when the monitored parameters were not maintained as required in § 63.1626, and corrective actions taken.

(7) If a malfunction occurred during the reporting period, the report must include the number, duration, and a brief description for each type of malfunction that occurred during the reporting period and caused or may have caused any applicable emissions limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1623(g), including actions taken to correct a malfunction.

(8) You must submit records pursuant to paragraphs (d)(8)(i) through (d)(8)(iii) of this section.

(i) Within 60 days after the date of completing each performance test, as defined in § 63.2 and as required in this subpart, you must submit performance test data, except opacity data, electronically to the EPA's Central Data Exchange by using the Electronic Reporting Tool (see *http://www.epa.gov/ttnchie1/ert/*). Only data collected using test methods compatible with the Electronic Reporting Tool are subject to this requirement to be submitted electronically into the EPA's WebFIRE database.

(ii) Within 60 days after the date of completing each CEMS performance evaluation test, as defined in § 63.2 and required by this subpart, you must submit the relative accuracy test audit data electronically into the EPA's Central Data Exchange by using the Electronic Reporting Tool as mentioned in paragraph (d)(8)(i) of this section. Only data collected using test methods compatible with the Electronic Reporting Tool are subject to this requirement to be submitted electronically into the EPA's WebFIRE database.

(iii) All reports required by this subpart not subject to the requirements in paragraph (d)(8)(i) and (d)(8)(ii) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. The Administrator or the delegated authority may request a report in any form suitable for the specific case (*e.g.,* by electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraph (d)(9)(i) and (d)(9)(ii) of this section in paper format.

13. Section 63.1630 is added to read as follows:

**§ 63.1630 Who implements and enforces this subpart?**

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable state, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a state, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if this subpart is delegated to a state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the state, local, or tribal agency.

(c) The authorities that cannot be delegated to state, local, or tribal agencies are as specified in paragraphs (c)(1) through (c)(4) of this section.

(1) Approval of alternatives to requirements in §§ 63.1620 and 63.1621 and 63.1623 and 63.1624.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

14. Section 63.1650 is amended by:

a. Revising paragraph (d);

b. Removing and reserving paragraph (e)(1); and

c. Revising paragraph (e)(2) to read as follows:

**§ 63.1650 Applicability and Compliance Dates.**

* * * * *

(d) Table 1 to this subpart specifies the provisions of subpart A of this part that apply to owners and operators of ferroalloy production facilities subject to this subpart.

(e) * * *

(1) [Reserved]

(2) Each owner or operator of a new or reconstructed affected source that commences construction or reconstruction after August 4, 1998 and before November 23, 2011 must comply with the requirements of this subpart by May 20, 1999 or upon startup of operations, whichever is later.

15. Section 63.1651 is amended by adding a definition for ''Affirmative defense'' in alphabetic order to read as follows:

**§ 63.1651 Definitions.**

*Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

16. Section 63.1652 is amended by adding paragraph (f) to read as follows:

**§ 63.1652 Emission standards.**

* * * * *

(f) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

17. Section 63.1656 is amended by:

a. Adding paragraph (a)(6);

b. Revising paragraph (e)(1); and

c. Removing and reserving paragraph (e)(2)(ii) to read as follows:

**§ 63.1656 Performance testing, test methods, and compliance demonstrations.**

(a) * * *

(6) You must conduct the performance tests specified in paragraph (c) of this section under such conditions as the Administrator specifies based on representative performance of the affected source for the period being tested. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(e) * * *

(1) *Fugitive dust sources.* Failure to have a fugitive dust control plan or failure to report deviations from the plan and take necessary corrective action would be a violation of the

general duty to ensure that fugitive dust sources are operated and maintained in a manner consistent with good air pollution control practices for minimizing emissions per § 63.1652(f).

(2) * * *

(ii) [Reserved]

* * * * *

18. Section 63.1657 is amended by:

a. Revising paragraph (a)(6);

b. Revising paragraph (b)(3); and

c. Revising paragraph (c)(7) to read as follows:

**§ 63.1657 Monitoring requirements.**

(a) * * *

(6) Failure to monitor or failure to take corrective action under the requirements of paragraph (a) of this section would be a violation of the general duty to operate in a manner consistent with good air pollution control practices that minimizes emissions per § 63.1652(f).

(b) * * *

(3) Failure to monitor or failure to take corrective action under the requirements of paragraph (b) of this section would be a violation of the general duty to operate in a manner consistent with good air pollution control practices that minimizes emissions per § 63.1652(f).

(c) * * *

(7) Failure to monitor or failure to take corrective action under the requirements of paragraph (c) of this section would be a violation of the general duty to operate in a manner consistent with good air pollution control practices that minimizes emissions per § 63.1652(f).

19. Section 63.1659 is amended by revising paragraph (a)(4) to read as follows:

(a) * * *

(4) *Reporting malfunctions.* If a malfunction occurred during the reporting period, the report must include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1652(f), including actions taken to correct a malfunction.

* * * * *

20. Section 63.1660 is amended by:

a. Revising paragraphs (a)(2)(i) and (a)(2)(ii); and

b. Removing and reserving paragraphs (a)(2)(iv) and (a)(2)(v) to read as follows:

(a) * * *

(2) * * *

(i) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control equipment and monitoring equipment;

(ii) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1652(f), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation;

* * * * *

(iv) [Reserved]

(v) [Reserved]

* * * * *

21. Section 63.1662 is added to read as follows:

**§ 63.1662 Affirmative defense for exceedance of emission limit during malfunction.**

In response to an action to enforce the standards set forth in § 63.1652 through § 63.1654 you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) Notification. The owner or operator of the affected source experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in § 63.1652 through § 63.1654 to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

22. Add Table 1 to the end of subpart XXX to read as follows:

TABLE 1 TO SUBPART XXX OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART XXX

| Reference | Applies to subpart XXX | Comment |
|---|---|---|
| 63.1 | Yes. | |
| 63.2 | Yes. | |
| 63.3 | Yes. | |
| 63.4 | Yes. | |
| 63.5 | Yes. | |
| 63.6(a), (b), (c) | Yes. | |
| 63.6(d) | No | Section reserved. |
| 63.6(e)(1)(i) | No | See 63.1623(g) and 63.1652(f) for general duty requirement. |
| 63.6(e)(1)(ii) | No. | |
| 63.6(e)(1)(iii) | Yes. | |
| 63.6(e)(2) | No | Section reserved. |
| 63.6(e)(3) | No. | |
| 63.6(f)(1) | No. | |
| 6.6(f)(2)–(f)(3). | | |
| 63.6(g) | Yes. | |
| 63.6(h)(1) | No. | |
| 63.6(h)(2)–(h)(9) | Yes. | |
| 63.6(i) | Yes. | |
| 63.6(j) | Yes. | |
| § 63.7(a)–(d) | Yes. | |
| § 63.7(e)(1) | No | See 63.1625(a)(5) and 63.1656(a)(6). |
| § 63.7(e)(2)–(e)(4) | Yes. | |
| 63.7(f), (g), (h) | Yes. | |
| 63.8(a)–(b) | Yes. | |
| 63.8(c)(1)(i) | No | See 63.1623(g) and 63.1652(f) for general duty requirement. |
| 63.8(c)(1)(ii) | Yes. | |
| 63.8(c)(1)(iii) | No. | |
| 63.8(c)(2)–(d)(2) | Yes. | |
| 63.8(d)(3) | Yes, except for last sentence. | |
| 63.8(e)–(g) | Yes. | |
| 63.9(a), (b), (c), (e), (g), (h)(1) through (3), (h)(5) and (6), (i) and (j). | Yes. | |
| 63.9(f) | Yes. | |
| 63.9(h)(4) | No | Reserved. |
| 63.10 (a) | Yes. | |
| 63.10 (b)(1) | Yes. | |
| 63.10(b)(2)(i) | No. | |
| 63.10(b)(2)(ii) | No | See 63.1629 and 63.1660 for recordkeeping of occurrence and duration of malfunctions and recordkeeping of actions taken during malfunction. |
| 63.10(b)(2)(iii) | Yes. | |
| 63.10(b)(2)(iv)–(b)(2)(v) | No. | |
| 63.10(b)(2)(vi)–(b)(2)(xiv) | Yes. | |
| 63.(10)(b)(3) | Yes. | |
| 63.10(c)(1)–(9) | Yes. | |
| 63.10(c)(10)–(11) | No | See 63.1629 and 63.1630 for recordkeeping of malfunctions. |
| 63.10(c)(12)–(c)(14) | Yes. | |
| 63.10(c)(15) | No. | |
| 63.10(d)(1)–(4) | Yes. | |
| 63.10(d)(5) | No | See 63.1629(d)(8) and 63.1659(a)(4) for reporting of malfunctions. |
| 63.10(e)–((f) | Yes. | |
| 63.11 | No | Flares will not be used to comply with the emission limits. |
| 63.12 to 63.15 | Yes. | |

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Part III

## Nuclear Regulatory Commission

10 CFR Parts 50 and 52

Enhancements to Emergency Preparedness Regulations; Final Rule

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 50 and 52**

**[NRC–2008–0122]**

**RIN 3150–AI10**

## Enhancements to Emergency Preparedness Regulations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending certain emergency preparedness (EP) requirements in its regulations that govern domestic licensing of production and utilization facilities. The final rule adds a conforming provision in the regulations that govern licenses, certifications, and approvals for new nuclear power plants. The final rule codifies certain voluntary protective measures contained in NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events,'' and generically applicable requirements similar to those previously imposed by Commission orders. In addition, the final rule amends other licensee emergency plan requirements based on a comprehensive review of the NRC's EP regulations and guidance. The requirements enhance the ability of licensees in preparing to take and taking certain EP and protective measures in the event of a radiological emergency; address, in part, security issues identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent emergency plan implementation among licensees; and modify certain EP requirements to be more effective and efficient.

**DATES:** This final rule is effective on December 23, 2011.

**ADDRESSES:** You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this final rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0122. Address questions about NRC dockets to Carol Gallagher, *telephone:* (301) 492–3668; *email: Carol.Gallagher@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Robert Beall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* (301) 415–3874, *email: Robert.Beall@nrc.gov;* or Don Tailleart, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* (301) 415–2966, *email: Don.Tailleart@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Background
II. Discussion
III. Public and Stakeholder Input to the Final Rule
IV. Section-by-Section Analysis
V. Implementation
VI. Guidance
VII. Criminal Penalties
VIII. Agreement State Compatibility
IX. Availability of Documents
X. Voluntary Consensus Standards
XI. Finding of No Significant Environmental Impact: Availability
XII. Paperwork Reduction Act Statement
XIII. Regulatory Analysis: Availability
XIV. Regulatory Flexibility Certification
XV. Backfit Analysis
XVI. Congressional Review Act

## I. Background

After the terrorist events of September 11, 2001, the NRC determined that it was necessary to require certain modifications of EP programs for operating power reactor licensees to ensure continued adequate protection of public health and safety. These modifications were issued to licensees by NRC Order EA–02–026, ''Order for Interim Safeguards and Security Compensatory Measures,'' (Order EA–02–026), dated February 25, 2002. Order EA–02–026 was issued to the license holders of the 104 commercial nuclear power reactors in the U.S. This order required licensees to implement interim compensatory measures (ICMs) for the post-September 11, 2001, threat environment and take actions such as:

(1) Review security and emergency plans to maximize compatibility between the plans;

(2) Assess the adequacy of staffing plans at emergency response facilities, and for licensees with an onsite emergency operations facility (EOF), identify alternative facilities capable of supporting emergency response;

(3) Develop plans, procedures and training regarding notification (including non-emergency response organization (ERO) employees), activation, and coordination between the site and offsite response organizations (OROs);

(4) Conduct a review of staffing to ensure that collateral duties are not assigned to responders that would prevent effective emergency response; and

(5) Implement site-specific emergency action levels (EALs) to provide an anticipatory response to a credible threat.

Following the issuance of Order EA–02–026, the NRC conducted inspections of licensee EP programs and held meetings with nuclear power industry representatives to discuss the inspection results and the modifications licensees had made to their EP programs.

Also following the terrorist events of September 11, 2001, the NRC evaluated the EP planning basis for nuclear power reactors given the changed threat environment. In SECY–03–0165, ''Evaluation of Nuclear Power Reactor Emergency Preparedness Planning Basis Adequacy in the Post-9/11 Threat Environment,'' issued on September 22, 2003 (not publicly available), the NRC staff reported to the Commission that the EP planning basis remained valid, including scope and timing issues. However, the NRC staff also recognized that security events differ from accident events due to the planned action to maximize damage and loss of life and that the EP response to such events also differed. The NRC staff noted several EP issues that required further action to better respond to the post-September 11, 2001, threat environment.

On December 14, 2004, the NRC staff briefed the Commission on EP program initiatives. During the briefing, the NRC staff informed the Commission of its intent to conduct a comprehensive review of EP regulations and guidance. On February 25, 2005, in response to the Commission's staff requirements memorandum (SRM), SRM–M041214B, ''Briefing on Emergency Preparedness Program Initiatives, 1 p.m., Tuesday, December 14, 2004, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance),'' dated December

20, 2004, the NRC staff provided the Commission with a schedule of activities for the completion of the comprehensive review. The NRC staff, through SECY–05–0010, ''Recommended Enhancements of Emergency Preparedness and Response at Nuclear Power Plants in Post-9/11 Environment,'' issued on January 10, 2005 (not publicly available), requested Commission approval of the NRC staff's recommendations for enhancing, through new guidance documents, EP in the post-September 11, 2001, threat environment. In its SRM to SECY–05–0010, dated May 4, 2005 (not publicly available), the Commission directed the staff to provide the results of a comprehensive review of EP regulations and guidance. The SRM to SECY–05–0010 also approved the staff's recommendation to proceed with enhancements to address EP issues as described in SECY–05–0010. As a result, the NRC staff issued Bulletin 2005–02 (BL–05–02), ''Emergency Preparedness and Response Actions for Security-Based Events,'' dated July 18, 2005, which recommended enhancements that licensees could integrate into EP programs at power reactors. Bulletin BL–05–02 also sought to obtain information from licensees on their actions taken to implement Order EA–02–026 and to modify their EP programs to adjust to the current threat environment. Based on the results of the post-BL–05–02 inspections, meetings with members of the nuclear power industry, and licensees' responses to BL–05–02, the NRC determined that licensees were implementing strategies to satisfy Order EA–02–026 and enhance their programs to address the changed threat environment.

As directed by the Commission SRMs discussed above, the NRC staff conducted a comprehensive review of the EP regulatory structure, including reviews of regulations and guidance documents. As part of this review, the NRC staff met with internal and external stakeholders through several public meetings in 2005 and 2006 to discuss the elements of the EP review and plans to update EP regulations and guidance. Section III of this document provides a list of the public and other stakeholder meetings.

On September 20, 2006, the NRC staff provided the results of its review to the Commission in SECY–06–0200, ''Results of the Review of Emergency Preparedness Regulations and Guidance,'' dated September 20, 2006. In that paper, the NRC staff discussed the activities it had conducted to complete the review and provided its recommendation to pursue rulemaking for enhancements to the EP program. The NRC staff explained that the comprehensive review of the EP program identified several areas where the implementation of EP regulations and guidance, recent technological advances, and lessons learned from actual events, drills, and exercises had revealed to the NRC areas for potential improvement and increased clarity for the EP program. The staff divided the potential enhancements into two categories: security-based EP issues and other EP issues. The NRC staff evaluated each issue and assigned it a priority of high, medium, or low based on an analysis of the issue's relationship to reactor safety, physical security, EP, NRC strategic goals of openness and effectiveness, and stakeholder impact.

The NRC staff's outreach efforts, data gathering, research, and analysis led to the identification of 12 issues with a high priority, including six security EP issues and six non-security EP issues. In SECY–06–0200, the staff presented a framework for the potential enhancements to the EP regulations and guidance to address these issues, including steps for implementation, prioritization, and resource estimates. Based on its review, the NRC staff recommended that the Commission approve rulemaking as the most effective and efficient means to ensure that the high priority EP issues were resolved with an opportunity for participation by all interested stakeholders.

In its SRM to SECY–06–0200, dated January 8, 2007, the Commission approved the NRC staff's recommendation to pursue rulemaking and guidance changes for enhancements to the EP program. On April 17, 2007, the staff provided its rulemaking plan to the Commission. During the development of the plan, the NRC staff assessed the issues identified in SECY–06–0200 and discussed the feasibility of conducting rulemaking and updating guidance on all issues. The staff determined that the best course of action was to conduct rulemaking on the 12 issues identified in SECY–06–0200 as having a high priority, and to reassess the remaining issues at a later date. The decision to conduct rulemaking on the highest priority issues was made to allow a timelier rulemaking effort to occur and enable the staff to more completely assess the remaining lower priority issues.

Due to the similarities between two issues known in the rulemaking plan as ''collateral duties'' and ''shift staffing and augmentation,'' these issues have been partially combined in this final rule. Additionally, the Commission directed the NRC staff in SRM–M060502, ''Staff Requirements—Briefing on Status of Emergency Planning Activities, (Two sessions) 9:30 a.m. and 1 p.m., Tuesday, May 2, 2006, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to public attendance),'' dated June 29, 2006, to coordinate with the Department of Homeland Security (DHS) to develop emergency planning exercise scenarios that would ensure that EP drills and exercises will be challenging and will not precondition participant responses. This direction was incorporated into the rulemaking issue regarding the conduct of hostile action drills and exercises because it was so closely related. Bulletin BL–05–02 provided a definition of ''hostile action'' for use in EP programs: ''An act toward an NPP [nuclear power plant] or its personnel that includes the use of violent force to destroy equipment, take hostages, and/or intimidate the licensee to achieve an end. This includes attack by air, land, or water using guns, explosives, projectiles, vehicles, or other devices used to deliver destructive force. Other acts that satisfy the overall intent may be included.''

In an effort to conduct a rulemaking that would be transparent and open to stakeholder participation, the NRC engaged stakeholders through various means during the development of this rule. The NRC discussed the proposed improvements to the EP regulations and guidance at several conferences with key stakeholders present including the 2007 NRC Regulatory Information Conference (RIC) and the 2008 National Radiological Emergency Preparedness (NREP) Conference. These meetings are discussed more fully in Section III of this document.

The NRC posted draft rule language on the Federal rulemaking Web site, *http://www.regulations.gov,* on February 29, 2008, and solicited stakeholder comments. The NRC considered the comments received on the draft rule language in the process of developing the proposed rule. The NRC continued the use of public meetings as a method to foster open communication with stakeholders when it held public meetings on March 5, 2008, and on July 8, 2008. At the March 5, 2008 meeting, the NRC staff discussed the draft preliminary rule language for the rulemaking on enhancements to EP regulations and guidance and answered stakeholders' questions on the rule language. At the July 8, 2008, meeting, the NRC staff discussed the public comments on the draft preliminary rule language and answered stakeholders'

questions on how these comments may be addressed in the proposed rule.

On January 9, 2009, the NRC staff provided the proposed rule to the Commission in SECY–09–0007, ''Proposed Rule Related to Enhancements to Emergency Preparedness Regulations (10 CFR [Title 10 of the *Code of Federal Regulations*] part 50).'' In its SRM to SECY–09–0007, dated April 16, 2009, the Commission approved the publication of the proposed rule. The NRC published the proposed rule on the enhancements to EP regulations for public comment in the **Federal Register** on May 18, 2009 (74 FR 23254). Because it received several requests to lengthen the public comment period, the NRC extended the deadline for the public comment period from August 3, 2009, to October 19, 2009. During the public comment period, the NRC and the Federal Emergency Management Agency (FEMA) jointly held 11 public meetings to discuss the proposed rule and related guidance documents. The NRC received a total of 94 submittals and from these submittals, 687 individual comments were identified.

On December 8, 2009, NRC and FEMA staff briefed the Commission on the status of the EP rulemaking and comments received during the public comment period. In addition, a panel of external stakeholders briefed the Commission on their comments and views regarding the proposed rule. In SRM–M091208, ''Staff Requirements—Briefing on the Proposed Rule: Enhancements to Emergency Preparedness Regulations, 9:30 a.m., Tuesday, December 8, 2009, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance),'' dated January 13, 2010, the Commission directed the NRC staff to continue working with FEMA in considering comments from State and local officials, and other interested stakeholders, to enhance the EP regulations and guidance. The Commission also directed the NRC staff to address the impacts of the rule and to consider providing a public draft of the rule language and guidance documents via the NRC public Web site while working with the Advisory Committee on Reactor Safeguards on the draft final rule.

On November 15, 2010, the NRC and FEMA held a public meeting to discuss the proposed implementation dates for the EP final rule. The feedback from this meeting, as well as all the previous interactions, informed the NRC's schedule for the implementation of the new EP requirements.

## II. Discussion

The final rule applies to 10 CFR part 50 licensees that are currently subject to the EP requirements. The final rule similarly applies to certain applicants for construction permits under Part 50 with respect to their discussion of preliminary plans for coping with emergencies (§ 50.34(a)(10)), operating licenses under Part 50 (§ 50.34(b)(6)(v)), early site permits under Part 52 that choose to propose either major features of an, or a complete and integrated, emergency plan (§ 52.17(b)(2)), and combined licenses under Part 52 (§ 52.79(a)(21)). A discussion of which applicants may defer compliance with the requirements of this final rule is provided in Section V of this document.

An effective EP program decreases the likelihood of an initiating event at a nuclear power reactor proceeding to a severe accident. Emergency preparedness cannot affect the probability of the initiating event, but a high level of EP increases the probability of accident mitigation if the initiating event proceeds beyond the need for initial operator actions. As a defense-in-depth measure, emergency response is not normally quantified in probabilistic risk assessments. However, the level of EP could affect the outcome of an accident in that the accident may be mitigated by the actions of the ERO or, in the worst case, consequences to the public could be reduced through the effective use of protective actions. Enhancements to the level of EP in this manner enhance protection of public health and safety through improvements in the response to unlikely initiating events that could lead to severe accidents without mitigative response.

The NRC's EP requirements are based on 16 planning standards in § 50.47(b) that apply to onsite and offsite emergency response plans. The planning standards apply to onsite and offsite plans because, in making its licensing decision, the NRC looks at the application (or the licensee's activities in the case of existing facilities), the current State and local government emergency plans, and FEMA's recommendation, which is based on the content of the State and local plans. The FEMA regulations in 44 CFR part 350 also contain these planning standards, which are used to make its recommendation on the adequacy of the plans and capability of the State and local governments to implement them; however, FEMA's regulations address only offsite (State and local government) plans. The changes to § 50.47(b) in this final rule are designed to affect the onsite plans, not the offsite plans. The changes have been written in a way that is expected to limit the chance of unintended impacts on FEMA regulations.

This final rule does not affect the findings necessary for issuance of a renewed nuclear power operating license under 10 CFR part 54. As the Commission explained in the license renewal final rule (56 FR 64943; December 13, 1991) and again in revisions to that final rule (60 FR 22461; May 8, 1995), the scope of license renewal is limited to those issues that have a specific relevance to protecting the public health and safety during the license renewal period (*i.e.,* age-related degradation). Issues relevant to current plant operations, like emergency planning, fall within the purview of the current regulatory process and continue into the extended operation period of a license renewal. See also NUREG–1412, ''Foundation for the Adequacy of the Licensing Bases,'' dated December 1991. The Commission has affirmed repeatedly that ''emergency preparedness need not be reviewed again for license renewal,'' 71 FR 74848, 74852; December 13, 2006 (referencing 56 FR at 64966). The Commission stated that ''[t]hrough its standards and required exercises, the Commission ensures that existing plans are adequate throughout the life of any plant even in the face of changing demographics and other site-related factors.'' 71 FR at 74852 (quoting 56 FR at 64966). This basic determination is reflected in the NRC's regulations at § 50.47(a), in which a new finding on emergency planning issues is not required for license renewal.

The discussion of the amendments in this final rule is divided into two sections: Section II.A for security-related EP issues and Section II.B for non-security related EP issues. The security-related issues are topics that address subjects similar to certain requirements in Order EA–02–026 and the guidance in BL–05–02. The non-security related issues are high priority items that resulted from the comprehensive review of EP regulations and guidance.

### *A. Security-Related EP Issues*

The NRC is enhancing its EP regulations by incorporating changes that clearly address EP actions for hostile action. Some of the changes are based on requirements in Order EA–02–026 that was issued to ensure adequate protection of the public health and safety and common defense and security. After the issuance of Order EA–02–026, however, the Commission took several additional steps to ensure

adequate protection of the public health and safety and common defense and security, including the issuance of Order EA–02–261, ''Access Authorization Order,'' issued January 7, 2003 (68 FR 1643; January 13, 2003); Order EA–03–039, ''Security Personnel Training and Qualification Requirements (Training) Order,'' issued April 29, 2003 (68 FR 24514; May 7, 2003); Order EA–03–086, ''Revised Design Basis Threat Order,'' issued April 29, 2003 (68 FR 24517; May 7, 2003); the Design Basis Threat (DBT) final rule (72 FR 12705; March 19, 2007); and the Power Reactor Security Requirements final rule (74 FR 13926; March 27, 2009). As a result of these adequate protection requirements, the Commission has determined that the existing regulatory structure ensures adequate protection of public health and safety and common defense and security. Therefore, the EP changes in this final rule that are based on the requirements of Order EA–02–026 are not necessary to ensure adequate protection during hostile action. These amendments are considered enhancements to the current EP regulations. However, licensees' implementation of these enhancements will result in a substantial increase in EP and the protection of public health and safety.

1. On-Shift Staffing Analysis

The NRC is concerned that on-shift ERO personnel who are assigned to emergency plan implementation functions may have numerous tasks or multiple responsibilities that would prevent timely performance of their assigned emergency plan tasks. The requirements for on-shift responsibilities are addressed in § 50.47(b)(2) and Part 50, Appendix E, Section IV.A. The former regulations did not specifically require that on-shift personnel assigned to emergency plan implementation must be able to implement the plan effectively without having competing responsibilities that could prevent them from performing their primary emergency plan tasks. The NRC regulations and guidance concerning licensee EROs are general in nature to allow some flexibility in the number of on-shift staff required for response to emergency events. This sometimes has resulted in the inadequate completion of emergency functions required during an emergency event. The NRC issued Information Notice (IN) 91–77, ''Shift Staffing at Nuclear Power Plants,'' dated November 26, 1991, to alert licensees to problems that could arise from insufficient on-shift staff for emergency response. The IN highlighted the following two events:

- A fire at one plant in April 1991 resulted in the licensee's failure to notify some key emergency response personnel (communication function). The need to staff the fire brigade and perform numerous response actions required by the event resulted in a heavy workload for the shift staff.
- A fire, loss of offsite power, and reactor trip at another plant in June 1991 resulted in difficulties in classifying the event, notifying required personnel, implementing emergency operating procedures, and staffing the fire brigade. Insufficient staff contributed to the licensee's failure to make a timely Notification of Unusual Event.

The NRC issued IN 93–81, ''Implementation of Engineering Expertise On-Shift,'' dated October 12, 1993, to alert licensees of ineffective implementation of the requirement to provide adequate engineering expertise on shift. Each nuclear power plant is required to have a shift technical advisor (STA) to provide engineering and accident assessment expertise. However, some licensees had assigned additional response duties to STAs, such as communicator or fire brigade member, which could have resulted in overburdening the control room staff during an emergency event. One licensee had assigned the STA as fire brigade leader, which could have hindered the STA from performing the primary duty of providing accident assessment and engineering expertise.

After issuance of IN 91–77, event follow-up inspections indicated that challenges involving shift staffing and task allocation continued. The NRC initiated a study in 1995 to assess the adequacy of shift staffing for emergency response. The NRC published IN 95–48, ''Results of Shift Staffing Study,'' dated October 10, 1995, which cited several observations of inadequate staffing and also concluded that there could be a large workload for radiological support personnel during emergencies. Data was collected on the adequacy of nuclear power plant staffing practices for performing response activities during two accident scenarios, which were (1) a fire leading to reactor trip with complications, and (2) either a control room fire leading to evacuation and remote shutdown or a station blackout. Items of interest included the following:

- Licensees surveyed did not use a systematic process for establishing site-specific shift staffing levels.
- Licensees surveyed frequently assigned additional plant-specific tasks that were not specified by regulation to be performed by licensed and non-licensed operators during an event.
- Five of the seven licensees surveyed used licensed personnel to staff the fire brigade.
- Procedures varied significantly concerning licensed and non-licensed personnel staffing levels, and the number of non-licensed operators used on the night-shift varied greatly.
- Radiation protection and chemistry technicians of all the licensees surveyed had a high workload during the scenarios.

Multiple NRC inspection findings also indicate the need for regulatory clarity in the assignment of multiple responsibilities to on-shift ERO personnel. For example, in February 2003, one licensee revised its emergency plan to delete one of three communicators and assigned the communicator function to the STA as an additional duty. As previously stated, the primary emergency plan duty of the STA is to provide engineering and accident assessment expertise. The NRC determined that this emergency plan change was an inappropriate reduction in on-shift staff and assessed the change as a decrease in effectiveness of the emergency plan in violation of § 50.54(q). In April 2005, another licensee revised its emergency plan to allow the assignment of the on-shift health physics technician (HP Tech.) as the interim operations support center coordinator, a 30-minute augmented ERO responder. The HP Tech. had assigned emergency plan tasks including in-plant surveys, in-plant protective actions, and rescue/first aid. The NRC determined that this emergency plan change was an inappropriate assignment of augmentation staff duties to an on-shift responder and assessed the change as a decrease in effectiveness of the emergency plan in violation of § 50.54(q).

These findings demonstrated the need for amended regulations to explicitly limit on-shift ERO response duties to ensure that these emergency responders do not become overburdened during an emergency event. Having additional duties beyond the assigned emergency plan implementation functions could result in on-shift responders being overburdened, resulting in inadequate or untimely response.

The ICMs in Order EA–02–026 addressed on-shift staff responsibilities by requiring licensees to ensure that a sufficient number of on-shift personnel are available for integrated security plan and emergency plan implementation. Prior to issuance of the order, some licensees were utilizing security

personnel to implement the emergency plan when many of these responders would likely not be available due to a hostile action.

The NRC considered several options to resolve this issue. One option was to take no action, but this alternative would not have subjected new nuclear power reactor licensees to Order EA–02–026's requirement of an assessment to ensure adequate staff for integrated security plan and emergency plan implementation. Additionally, the shift staffing study referenced in IN 95–48 found that the licensees surveyed did not use a systematic process for establishing shift staffing levels and additional tasks, not required by regulation, were assigned to the licensed and non-licensed operators. This practice, if permitted to continue, could have resulted in operators being overburdened during an emergency. A second option was to allow licensees to use a voluntary program to ensure adequate shift staffing. However, many licensees have requested NRC permission to reduce on-shift staffing levels and the NRC would have expected this practice to continue. This could have increased the risk of over-burdening on-shift responders and resulted in inadequate or untimely response. Therefore, both of these options were considered unacceptable.

In the proposed rule, the NRC would have required nuclear power plant licensees to provide a detailed analysis to show that on-shift personnel assigned emergency plan implementation functions were not assigned any responsibilities that would prevent them from performing their assigned emergency plan functions. The NRC received several comments on this proposal, questioning the need for this regulation and suggesting that the proposed rule methodology should be placed in a regulatory guide, NUREG, or some other guidance document. The NRC disagrees with these comments and believes that a regulation is necessary to ensure consistent licensee implementation of on-shift emergency response staffing that is enforceable and not merely guidance. Therefore, the NRC is amending Part 50, Appendix E, Section IV.A, to address this issue, as discussed in Section IV of this document.

In the proposed rule, the NRC asked for public comment on whether the NRC should enhance its regulations to be more explicit in the number of ERO staff necessary for response to nuclear power plant emergencies. Specifically, the NRC requested comments on a draft staffing table that provided proposed staff functions and minimum staffing levels for the on-shift and augmenting ERO. The table was a modification of the guidance found in Table B–1 of NUREG–0654/FEMA–REP–1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' dated November 1980, and incorporated lessons learned from years of NRC EP experience. Of the comments the NRC received, some comments supported and some opposed the inclusion of the table into regulations. The NRC acknowledges that because each site is different and site characteristics may dictate the size of the ERO staff, requiring compliance with standard staffing requirements would be an unreasonable approach to resolving this issue. For example, the NRC has approved some emergency plans with additional ERO staff due to site-specific circumstances, such as the lack of a local fire department or hospital. Therefore, the NRC is not specifying a standard ERO staffing table in its regulations.

In the proposed rule, the NRC asked for public comment on whether the NRC should add a requirement for non-power reactor licensees to perform a detailed analysis demonstrating that on-shift personnel can perform all assigned emergency plan implementation functions in a timely manner without having competing responsibilities that could prevent them from performing their emergency plan functions. The NRC received several comments that opposed a regulation imposing this requirement. The NRC agrees that this requirement is not necessary for non-power reactor licensees. Staffing at non-power reactors is generally small, which is commensurate with the need to operate the facility in a manner that is protective of public health and safety. The NRC reviews the staffing as part of initial reactor licensing. The functions of emergency staff are outlined in emergency plans and are tested through drills and exercises in accordance with NUREG–0849, ''Standard Review Plan for the Review and Evaluation of Emergency Plans for Research and Test Reactors,'' dated October 1983. Results are reviewed by the NRC during routine inspections. Therefore, the NRC has not included this requirement in the final rule.

2. Emergency Action Levels for Hostile Action

Section 50.47(b)(4) stipulates that emergency plans must include a standard emergency classification and EAL scheme. Part 50, Appendix E, Section IV.B, specifies that emergency plans shall include EALs that are to be used as criteria for determining the need for notification of State and local agencies, and participation of those agencies in emergency response. However, the former regulations did not require EALs for hostile action and did not address the issue of anticipatory response to hostile action. Although Order EA–02–026 and BL–05–02 addressed these issues, those improvements to the EAL requirements to address hostile action were only in orders and guidance. Thus, the NRC could not ensure consistent and effective implementation of these enhancements among existing and future licensees.

Order EA–02–026 required the declaration of at least a Notification of Unusual Event in response to a credible hostile action threat. In 2005, the NRC issued BL–05–02, which provided EAL enhancement examples for hostile action up to the General Emergency level. Bulletin BL–05–02 provided examples of EALs for all three EAL methodologies that could be implemented immediately without prior NRC approval (*i.e.,* NUREG–0654, NUMARC/NESP–007, ''Methodology for Development of Emergency Action Levels,'' and Nuclear Energy Institute (NEI) 99–01, ''Methodology for Development of Emergency Action Levels''). It also pointed out that because of improvements in Federal agencies' information-sharing and assessment capabilities, hostile action emergency declarations can be accomplished in a more anticipatory manner, based on a credible threat, than the current method of making declarations for accidental events. This would enable earlier implementation of emergency response actions.

Although all nuclear power reactor licensees have implemented both the credible threat EAL required by Order EA–02–026 and the EAL enhancements specified in BL–05–02, licensees were not required to maintain the enhancements identified in the bulletin. This could have resulted in inconsistent EAL implementation among licensees for response to hostile action. Also, future licensees would not have been required to include these enhancements in their emergency plans. This final rule establishes consistent EALs across the nuclear power industry for hostile action. The ICMs and BL–05–02 provided enhancements to EAL schemes that would allow event declarations to be accomplished in a more anticipatory manner. This timeliness is of the utmost importance because EALs are used as criteria for determining the need for notification and participation of State and local agencies. The NRC is

codifying these enhancements to the EAL requirements addressing hostile action by revising Part 50, Appendix E, Section IV.B, as discussed in Section IV of this document.

The NRC considered other options to attempt to resolve these issues, such as taking no action or allowing voluntary action by licensees. These options were rejected since there would have continued to be no regulatory requirement for current or future licensees to incorporate EALs for hostile action in their emergency plans, nor would there be a consistent minimum level of implementation that the NRC had determined to be adequate.

In the proposed rule, the NRC asked for public comment on whether the NRC should expand to non-power reactor licensees the requirement for power reactor licensees to have hostile action EALs. Appendix E to 10 CFR part 50 cites Regulatory Guide (RG) 2.6, ''Emergency Planning for Research and Test Reactors,'' dated March 1983, as the guidance for the acceptability of research and test reactor emergency plans. Regulatory Guide 2.6 endorses ANSI/ANS 15.16–1982, ''Emergency Planning for Research Reactors,'' as an acceptable approach to non-power reactor emergency plans. The newly updated ANSI/ANS 15.16–2008 includes hostile action EALs. The NRC has commenced the process to update RG 2.6 to endorse ANSI/ANS 15.16–2008. The NRC has also determined that further analysis and stakeholder interactions are needed prior to changing the requirements for non-power reactor licensees. Therefore, the NRC has not included a requirement in the final rule for non-power reactor licensees to have hostile action EALs.

3. Emergency Response Organization Augmentation and Alternative Facilities

Section 50.47(b)(2) and Part 50, Appendix E, Section IV.C, require licensees to have the capability to augment the on-shift staff within a short period of time after the declaration of an emergency to assist in mitigation activities. To accomplish this, ERO members typically staff an onsite Technical Support Center (TSC) that relieves the control room (CR) of emergency response duties and allows CR staff to focus on reactor safety. The ERO members also staff an onsite Operational Support Center (OSC) to provide an assembly area for damage repair teams. Lastly, ERO members staff an EOF, usually located in close proximity to the plant, to function as the center for evaluation and coordination activities related to the emergency and the focal point of information provided to Federal, State, and local authorities involved in the response.

Section 50.47(b)(8) and Part 50, Appendix E, Section IV.E, require licensees to have adequate emergency facilities and equipment to support emergency response. However, § 50.47(b)(8) and the former Part 50, Appendix E, Section IV.E, did not require licensees to identify alternative facilities to support ERO augmentation during hostile action. During hostile action, ERO members would likely not have access to the onsite emergency response facilities, or the EOF if it is located within the licensee's owner-controlled area. Nevertheless these events still warrant timely ERO augmentation so responders can travel quickly to the site once access is allowed.

Order EA–02–026 required that licensees assess the adequacy of staffing plans at emergency response facilities during hostile action, assuming the unavailability of the onsite TSC, and identify alternative facilities capable of supporting event response. These facilities would function as staging areas for augmentation staff until the site was secured, which would minimize delays in overall site response by permitting ERO assembly without exposing responders to the danger of hostile action. The NRC inspections to evaluate the effectiveness of the implementation of the ICMs revealed variations in the identification and staffing of alternative emergency response facilities.

Bulletin BL–05–02 described how alternative locations for onsite emergency response facilities support EP functions during hostile action. It stated that the ERO is expected to be staged in a manner that supports rapid response to limit or mitigate site damage or the potential for an offsite radiological release. It also pointed out that some licensees have chosen not to activate elements of the ERO during hostile action until the site was secured. However, the NRC considers it prudent, for hostile action events outside of normal working hours, to fully activate ERO members to promptly staff alternative facilities, in order to minimize delays in overall site response. Bulletin BL–05–02 conveyed that, even during normal working hours, licensees should consider deployment of onsite ERO personnel to an alternative facility near the site during hostile action.

To resolve this issue, the NRC considered taking no regulatory action or continuing the voluntary implementation currently in place as a result of BL–05–02 and the guidance endorsed by NRC Regulatory Issue Summary (RIS) 2006–12, ''Endorsement of Nuclear Energy Institute Guidance 'Enhancements to Emergency Preparedness Programs for Hostile Action,' '' dated July 19, 2006. If no action had been taken, there would have continued to be no explicit regulatory requirement regarding the actions necessary during hostile action for the ERO to staff an alternative facility. The ERO members would likely not have access to the site during hostile action, but timely augmentation would still be necessary for adequate response. Taking no regulatory action may have resulted in inconsistent implementation of ERO augmentation guidelines, and less effective overall site response. The NRC also considered using a voluntary program; however, voluntary programs, such as those developed per the NEI guidance endorsed by RIS 2006–12, would not provide a consistent, NRC-approved means for addressing needed enhancements for hostile action. The use of voluntary programs would not have ensured long-term continuity of the enhancements for both licensees and applicants. Thus, the NRC is codifying the ICM requirement and the enhancement examples described in BL–05–02 concerning ERO augmentation to alternative facilities during hostile action in Part 50, Appendix E, Section IV.E, to maximize the effectiveness of the site response. These changes are discussed in Section IV of this document.

4. Licensee Coordination With Offsite Response Organizations During Hostile Action

A unique challenge posed by hostile action at a nuclear power plant is the increased demand on local law enforcement agencies (LLEAs) that are expected to implement portions of ORO emergency plans, as well as respond to the plant. The former § 50.47(b)(1) and Appendix E to Part 50 did not explicitly require licensees to coordinate with OROs to ensure that personnel are available to carry out preplanned actions, such as traffic control and route alerting by LLEAs, during hostile action directed at the plant.

Licensees are required to identify ORO support for emergency response as well as demonstrate that various ORO capabilities exist through biennial evaluated exercises. Licensees and OROs have successfully demonstrated these capabilities for many years. However, the NRC recognized that hostile action may challenge OROs in ways unforeseen at the time the current regulations were developed. For example, local law enforcement personnel may be assigned both

evacuation plan and armed response duties during hostile action. The NRC acknowledged this challenge when it issued Order EA–02–026 and included provisions that licensees address coordination with OROs for hostile action. Specifically, the order required that licensees develop plans, procedures, and training regarding coordination between the site and OROs and directed licensees to review emergency plans to ensure sufficient numbers of personnel would be available during hostile action.

The NRC subsequently became aware through inspections and communications with licensees that ORO plans must be reviewed to ensure sufficient numbers of personnel would be available to respond during hostile action. The NRC communicated this need to licensees and OROs through RIS 2004–15, ''Emergency Preparedness Issues: Post-9/11,'' dated October 18, 2004, which provided information on EP issues based on NRC staff observations from the EP component of force-on-force (FOF) exercises and lessons learned from the telephonic walk-through drills conducted with all power reactor sites between August and October 2005. In addition, DHS initiated the Comprehensive Review Program that conducted a review of site and ORO response to hostile action at every nuclear plant site. This review often identified a gap in ORO resource planning. Based on these findings and lessons learned from hostile action pilot program drills (*see* Section II.A.6 of this document), the NRC believes there is inconsistent implementation among licensees concerning effective coordination with OROs regarding the availability of adequate resources to respond to hostile action at a nuclear power plant.

Licensees and the supporting OROs have taken various actions to respond to this issue, but criteria for determining the adequacy of the licensee and ORO actions have not been established. The NRC considered encouraging industry to develop and implement a voluntary program; however, voluntary programs do not provide a consistent, NRC-approved means for addressing the needed enhancements in the post-September 11, 2001, threat environment. A voluntary approach would not have ensured consistent industry-wide implementation of the ICM requirements and there would have been no requirement for new licensees to incorporate the changes into their emergency plans.

The NRC is amending Part 50, Appendix E, Section IV.A.7, to explicitly include hostile action at the site as one of the types of emergencies that define the State, local, and Federal agencies that licensees must identify in their emergency plan along with the assistance licensees expect from them. These changes are discussed in Section IV of this document.

5. Protection for Onsite Personnel

The former § 50.47(b)(10) and Appendix E to Part 50 did not require specific emergency plan provisions to protect onsite emergency responders and other onsite personnel in emergencies resulting from hostile action at nuclear power plants. Licensees are required to provide radiological protection for emergency workers and the public in the plume exposure pathway emergency planning zone (EPZ), including actions such as warning of an emergency, providing for evacuation and accountability of individuals, and providing for protective clothing and/or radio-protective drugs. Many of these personnel are required by the site emergency plan that the licensee must follow and maintain. The emergency plan requires responders with specific assignments to be available on-shift 24 hours a day to minimize the impact of radiological emergencies and provide for the protection of public health and safety. However, in analyses performed after the terrorist attacks of September 11, 2001, the NRC staff determined that a lack of protection for emergency responders who are expected to implement the emergency plan could result in the loss of those responders and thus an inability to effectively implement the emergency plan.

The normal response actions for personnel protection, such as site evacuation, site assembly and accountability, and activation of onsite emergency response facilities, may not be appropriate in this instance because these actions may place at risk the response personnel necessary to mitigate plant damage resulting from the hostile action. Bulletin BL–05–02 pointed out that actions different than those normally prescribed may be more appropriate during hostile action, particularly an aircraft attack. This may include actions such as evacuation of personnel from potential target buildings and accountability of personnel after the attack has concluded. Precise actions would depend on site-specific arrangements, such as the location of personnel in relation to potential targets. Procedures would need to be revised to ensure plant page announcements are timely and convey the onsite protective measures deemed appropriate.

The NRC considered other options to attempt to resolve this issue. The NRC considered taking no additional regulatory action and relying upon continuation of the voluntary initiatives currently being implemented by licensees as a result of BL–05–02. Taking no action could have resulted in the vulnerability of onsite personnel during hostile action. Action is necessary to ensure effective coordination to enable licensees to more effectively implement their pre-planned actions. Voluntary programs do not provide a consistent, NRC-approved means for addressing needed enhancements. Further, the implementation of voluntary actions would not have ensured that these measures would be incorporated into emergency plans at new sites.

The NRC is revising Appendix E by creating new Section IV.I, to require licensees to protect onsite personnel during hostile action and to ensure the continued ability of the licensee to safely shut down the reactor and perform the functions of the licensee's emergency plan, as discussed in Section IV of this document.

6. Challenging Drills and Exercises

A basic EP principle is that licensees conduct drills and exercises to develop and maintain key skills of ERO personnel. Drill and exercise programs contribute to the NRC determination of reasonable assurance that licensees can and will implement actions to protect public health and safety in the unlikely event of a radiological emergency. Implementation of the current regulations provides reasonable assurance of adequate protection of public health and safety at every nuclear plant site.

In the unlikely event that a licensee faces hostile action, the response organization will encounter challenges that differ significantly from those practiced in long-standing drill and exercise programs because these programs have not included hostile action scenarios. The former NRC regulations addressing this issue were general in nature and did not explicitly require licensees to include hostile action scenarios in drills and exercises, nor did they directly allow the NRC to require specific scenario content. The NRC is amending its regulations to do so.

Following the terrorist attacks of September 11, 2001, the NRC conducted a review of the EP planning basis in view of the changed threat environment and concluded that the EP planning basis remains valid. The NRC observed licensee performance during numerous

hostile action EP exercises and tabletop drills as well as several security FOF exercises. The NRC also discussed security-based EP issues with licensees and Federal, State, and local EP professionals and advocacy groups and issued BL–05–02 to collect information from licensees on the enhancements to drill and exercise programs to address the hostile action contingency.

Through these efforts, the NRC concluded that, although EP measures are designed to address a wide range of events, response to hostile action can present unique challenges not addressed in licensee and ORO drills and exercises, such as:

- Extensive coordination between operations, security, and EP personnel;
- Use of the alternative emergency response facilities for activation of the ERO;
- Execution of initial response actions in a hostile environment (*i.e.,* during simulated hostile action);
- The need to shelter personnel from armed attack or aircraft attack in a manner very different from that used during radiological emergencies;
- Conduct of operations and repair activities when the site conditions prevent normal access due to fire, locked doors, security measures, and areas that have not yet been secured;
- Conduct of operations and repair activities with large areas of the plant damaged or on fire;
- Rescue of, and medical attention to, significant numbers of personnel; and
- Prioritization of efforts to protect plant equipment or to secure access to plant areas for repairs.

In response to BL–05–02, all nuclear power reactor licensees stated that they would develop and implement an enhanced drill and exercise program. Program elements were captured in NEI 06–04, Rev. 1, ''Conducting a Hostile Action-Based Emergency Response Drill,'' a guidance document developed by NEI. The NRC endorsed this document for use in a pilot program in RIS 2008–08, ''Endorsement of Revision 1 to Nuclear Energy Institute Guidance Document NEI 06–04, 'Conducting a Hostile Action-Based Emergency Response Drill,' '' dated March 19, 2008. However, implementation of these enhancements was voluntary, and the NRC could not require licensees to maintain these enhancements, absent issuance of an order or a regulation.

The NRC also became aware of a related issue regarding EP exercise scenarios. The NRC inspects licensee response during these exercises and FEMA evaluates the capabilities of OROs. Licensees have performed many evaluated EP exercises and understand NRC and FEMA expectations. Licensees design scenarios in coordination with State and local agencies to demonstrate all key EP functions in a manner that facilitates evaluation. As a result, scenarios have become predictable and may precondition responders to sequential escalation of emergency classifications that always culminate in a large radiological release. Current biennial exercise scenarios do not resemble credible reactor accidents in that the timing is improbable and the intermittent containment failure typically used is unlikely. Typical scenarios used by licensees in biennial exercises involve simulated accidents, such as a loss of coolant accident or a steam generator tube rupture. However, certain predictable artifacts emerge in almost all biennial exercise scenarios, including the following:

- The ERO will not be allowed to mitigate the accident before a release occurs;
- The release will occur after a General Emergency is declared;
- The release will be terminated before the exercise ends; and
- The exercise will escalate sequentially through the emergency classes.

In short, responders may be preconditioned to accident sequences that are not likely to resemble the accidents they could realistically face.

In SRM–M060502, dated June 29, 2006, the Commission directed the NRC staff to develop exercise scenarios in conjunction with DHS, as follows:

> The staff should coordinate with DHS to develop emergency planning exercise scenarios which would help avoid anticipatory responses associated with preconditioning of participants by incorporating a wide spectrum of releases (ranging from little or no release to a large release) and events, including security-based events. These scenarios should emphasize the expected interfaces and coordination between key decision-makers based on realistic postulated events. The staff should share experiences of preconditioning or ''negative training'' with DHS.

As a result of the SRM, a joint NRC/FEMA working group was formed to review the development of emergency planning exercise scenarios. The working group was assigned the task of identifying the NRC and FEMA regulations that would require revision to enhance exercise scenarios and guidance to assist in the effective implementation of these regulations. The working group recommended several changes to the FEMA Radiological Emergency Preparedness (REP) Program Manual that comport with this final rule to address preconditioning and the incorporation of hostile action exercise scenarios.

The FEMA held focus group meetings in several FEMA regions to discuss potential policy changes to the REP Program Manual. The NRC supported these meetings to facilitate questions as they related to the EP rulemaking issue of challenging drills and exercises. For example, stakeholders voiced opinions on the requirements for the development and review of exercise scenarios, whether all emergency classification levels (ECLs) must be included in each exercise or if one or more ECLs can be skipped, how radiological release conditions and options could vary, and if a spectrum of scenarios will be varied to create more realistic and challenging exercises. Comments received from the different focus groups and stakeholders informed this rulemaking, new guidance documents associated with this rulemaking, and an update to the REP Program Manual.

A regulatory change is necessary to enhance scenario content to include hostile action scenarios and reduce preconditioning through a wide spectrum of challenges. This change will improve licensee ERO capability to protect public health and safety under all accident scenarios as well as reverse any trend toward preconditioning.

The NRC also considered not making any change to the regulations, but rejected that option because it would not adequately address the concerns previously discussed. The NRC also discussed the use of voluntary programs and although this option could be successful, the NRC could not require that changes made would be permanent and consistent across all sites.

The NRC is revising Appendix E, Section IV.F, to address these issues, as discussed in Section IV of this document.

*B. Non-Security Related EP Issues*

The remaining changes are new or amended requirements that result in a substantial increase to public health and safety because they maintain or strengthen the ability of licensees to effectively implement their emergency plans.

1. Backup Means for Alert and Notification Systems

The regulations for alert and notification system (ANS) capabilities are found in § 50.47(b)(5) and Part 50, Appendix E, Section IV.D.3, and require licensees to establish the capability to promptly alert and notify the public if there is an emergency event while meeting certain ANS design objectives.

The former regulations did not require backup power for sirens or other backup ANS alerting capabilities when a major portion of the primary alerting means is unavailable. The regulations also did not address backup notification capabilities. If a major portion of a facility's ANS is unavailable and no backup exists, then the public may not be promptly alerted of an event at the facility and the protective actions to be taken, which could affect the public's response to the event.

An ANS provides the capability to promptly alert the populace within the plume exposure pathway EPZ of a nuclear power plant in case of an emergency event and to inform the public what protective actions may need to be taken. The predominant method used around U.S. nuclear power plants for alerting the public is an ANS based on sirens to provide an acoustic warning signal. Some sites employ other means, such as tone alert radios and route alerting, as either primary or supplemental alerting methods. The public typically receives information about an event and offsite protective actions via emergency alert system (EAS) broadcasts or other means, such as mobile loudspeakers.

In several instances, nuclear power plants have lost all or a major portion of the alert function of an ANS for short time periods for various reasons, such as damage to ANS components caused by severe weather, loss of offsite alternating current (AC) power, malfunction of ANS activation equipment, or unexpected problems resulting from ANS hardware/software modifications. In other situations, the notification capability has been lost (*e.g.,* the inability to activate tone alert radios, which are used to provide both an alert signal and notification function).

The NRC has issued multiple INs to document the circumstances when ANS failures have occurred, including IN 2002–25, ''Challenges to Licensees' Ability to Provide Prompt Public Notification and Information During an Emergency Preparedness Event,'' dated August 26, 2002; IN 2005–06, ''Failure to Maintain Alert and Notification System Tone Alert Radio Capability,'' dated March 30, 2005; and IN 2006–28, ''Siren System Failures Due to Erroneous Siren System Signal,'' dated December 22, 2006. The inability to activate some tone alert radios because of a shorter tone activation signal permitted as part of EAS implementation was addressed in IN 1996–19, ''Failure of Tone Alert Radios to Activate When Receiving a Shortened Activation Signal,'' dated April 2, 1996. Without the ability to warn the population, the effectiveness of the notification element may be significantly reduced. Having a backup means in place would lessen the impact of the loss of the primary ANS.

Other events impacting ANS operability have involved the widespread loss of the electrical grid providing power to siren based systems, such as the electrical blackout in several areas of the northeastern U.S. and portions of Canada in August 2003. As discussed in RG 1.155, ''Station Blackout,'' dated August 1988, although the likelihood of failure of the onsite AC [alternating current] power system coincidental with the loss of offsite power is small, station blackout events may be substantial contributors to core damage events for some plants.

The U.S. Congress recognized that all emergency notification systems may not operate in the absence of an AC power supply and encouraged the use of newer alerting and notification technology. In U.S. House of Representatives Committee on Appropriations (House Appropriations Committee) Report 107–740, FEMA was directed to update its guidance on outdoor warning and mass notification systems and require all warning systems to be operable in the absence of an AC power supply. The House Appropriations Committee also urged FEMA to consult with other relevant agencies and revise the national standard for outdoor warning and mass notification to reflect state-of-the-art technology. Moreover, the Energy Policy Act of 2005 directed the Commission to require backup power for the emergency notification system, including siren systems, for nuclear power plants located where there is a permanent population, as determined by the 2000 decennial census, in excess of 15,000,000 within a 50 mile radius of the power plant. Therefore, it was appropriate that the NRC also considered changes to its existing regulations and guidance regarding warning systems for all nuclear power reactor licensees.

The NRC considered several options to attempt to resolve this issue, including reliance on ANS design review standards and related guidance documents to address ANS backup means. Several NRC and FEMA guidance documents, such as NUREG–0654 and FEMA–REP–10, ''Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants,'' dated November 1985, contain detailed information on ANS capabilities and design review methodology. Additional information on ANS backup capabilities will be provided in revisions or supplements to these documents. As guidance, a provision for an ANS backup means would not be considered a requirement and its applicability to existing approved ANS designs would be considered optional. As noted previously in this discussion, FEMA was also directed to update its guidance to require all warning systems to be operable in the absence of an alternating current power supply. However, guidance changes limited to backup power requirements for the alerting function would not address backup capabilities for other types of alerting devices or the ANS notification function. In summary, this option did not provide a regulatory resolution to ensure that nuclear power plant ANS designs include a backup method to the primary means for both alerting and notification, and thus the NRC considered this option to be unacceptable.

Use of a voluntary approach for ANS backup means was also considered. Some current nuclear power plant ANS designs address one or more aspects of backup ANS capabilities, such as providing backup power in the event primary power to sirens is lost, using backup route alerting when sirens are inoperable, designating multiple EAS broadcast stations to ensure that instructional messages can be transmitted, or using reverse 911 systems. A voluntary approach was considered as an option because State and local authorities can usually compensate for the temporary loss of some ANS capabilities. However, allowing licensees or applicants to voluntarily install backup ANS capabilities will not ensure that both the alerting and notification functions are addressed, or that new sites will have warning systems designed with comprehensive backup ANS capabilities. Given the importance of ANS to alert the public of an event at a facility and the protective actions to be taken, and without any voluntary industry commitment that existing or new warning systems will have a backup means available, the NRC considered a voluntary approach to be inappropriate and found this option unacceptable.

The NRC believes that nuclear power reactor licensees must be required to have backup ANS methods and therefore is amending its regulations to address backup capabilities for both the alert and notification functions. The NRC considered three alternatives for addressing this issue in rulemaking.

The first alternative would have added a regulatory requirement for ANS backup power. The most common warning system used at U.S. nuclear

power plants is based on sirens that are powered directly, or indirectly through batteries, by an AC power source. As noted previously in this discussion, the loss of power is not the only failure mode that can impact warning systems. Causes of past ANS inoperability problems have included the inability to detect siren failures, the inability to activate sirens, the failure to test and maintain personal home alerting devices, the use of telephone call-inhibiting devices, and the failure to provide and maintain distribution lists of tone alert radios. Thus, a regulatory requirement addressing only backup ANS power would not have eliminated any of these other failure modes. This approach would have prescribed one specific method as a backup means, precluding licensees (or applicants) and offsite officials from considering alternative methods, such as route alerting or newer communications technology, that may be more suitable for certain nuclear power plant sites. In summary, it would have addressed only one of several ANS failure modes (*i.e.,* loss of AC power) for one alerting method (*i.e.,* sirens). It would not have addressed backup methods for other types of alerting devices or any part of the notification process. Therefore, the NRC considered this approach to be unacceptable.

The second alternative would have required that the primary ANS be designed so no common single failure mode for the system existed; therefore, a backup system would not have been needed. This approach would have ensured that the entire ANS was designed and built to a very high level of reliability. Any equipment necessary for ANS activation and operation (*e.g.,* computers, radio transmitters and radio towers, plus the actual alerting devices and notification means) would have had redundant components and power sources as necessary to eliminate any common single failure mode, such as a widespread power outage affecting a siren based system. However, ensuring that all ANS common single failure vulnerabilities have been identified and adequately addressed would have been difficult. Even after extensive analysis and testing of a warning system, a common failure mechanism may not have become evident until the system was activated for an emergency event. For a siren based system, several additional sirens (with backup power capabilities) may have been needed to be installed to provide overlapping acoustic coverage in the event clusters of sirens fail and thus may have discouraged licensees at future nuclear power plant sites from using these systems due to the increased cost for installing additional sirens. This approach may not have been applicable to non-electronic primary warning systems based on other methods, such as route alerting. For these reasons, the NRC considered this approach to be unacceptable. Rejecting this approach does not mean that the issue of backup power for warning systems will be left unaddressed. As discussed previously, the House Committee on Appropriations directed FEMA to require all outdoor warning systems to be operable in the absence of AC power.

The third alternative was selected and revises Part 50, Appendix E, Section IV.D.3, to require a backup capability should the primary means of public alerting and notification be unavailable. These changes are discussed in Section IV of this document.

2. Emergency Declaration Timeliness

Emergency declaration is the process by which a licensee determines whether an off-normal plant condition warrants declaration as an emergency and, if so, which of the four emergency classes—Notification of Unusual Event, Alert, Site Area Emergency, or General Emergency—is to be declared. In its oversight of licensee EP programs, the NRC has observed several licensees whose responses in performing emergency declarations were inappropriately delayed. Between 2000 and 2009, the NRC identified 13 situations in which an emergency declaration was either not done or inappropriately delayed during an actual event, which resulted in findings and cited and non-cited violations. These situations may have been a result of a lack of a specific regulatory timeliness requirement.

Emergency declarations are fundamental to the licensee's EP program in that onsite and offsite emergency response activities are implemented in a staged, proportional manner, based upon the level of the declared emergency. If an emergency declaration is delayed, the subsequent emergency response actions may not be timely. Emergency response personnel, facilities, and equipment may not be in position should it become necessary to implement measures to protect public health and safety.

The NRC has issued generic communications to alert licensees of these concerns and to advise them of the NRC's expectation that emergency classifications [1] are made in a prompt manner. In 1985, the NRC published IN 85–80, ''Timely Declaration of an Emergency Class, Implementation of an Emergency Plan, and Emergency Notifications,'' to alert licensees of two instances in which declarations and/or notifications of an actual emergency condition were significantly delayed and to express the NRC expectation of timely emergency declarations. In 1995, the NRC found it necessary to publish Emergency Preparedness Position-2, ''Emergency Preparedness Position (EPPOS) on Timeliness of Classification of Emergency Conditions,'' to provide guidance to NRC staff in evaluating licensee performance in the area of timely classification. The NRC cited classification delays in actual events and exercises as the reason for issuing the guidance. The EPPOS–2 provided the NRC expectation that the classification should be made promptly following indications that conditions have reached an EAL threshold and that 15 minutes was a reasonable goal for completing the classification once indications are available to the control room operators. The NRC based that conclusion on the belief that 15 minutes is a reasonable period of time for assessing and classifying an emergency once indications are available to cognizant personnel, and that a delay in classification for up to 15 minutes would have a minimal impact upon the overall emergency response and protection of the public health and safety. The NRC noted that emergency classification schemes have reached a level of maturity in which the classification of emergencies can be accomplished in a relatively short period of time once the abnormal condition and associated plant parameters are known by cognizant licensee personnel. The EPPOS–2 stated that the 15-minute period was not to be viewed as a grace period in which a licensee could resolve a condition that had already exceeded an EAL threshold to avoid a declaration.

This 15-minute goal was not a regulatory requirement but rather a guideline for NRC staff evaluation of a licensee's performance in responding to an actual radiological emergency. This goal was subsequently incorporated as a criterion in the industry proposed and NRC-approved Reactor Oversight Process (ROP) EP Cornerstone performance indicators (PIs). Although the reported classification performance

[1] Early NRC generic communications routinely used the phrase ''emergency classification'' to denote the outcome of the process to assess, classify, and declare an emergency condition. This document uses the phrase ''emergency declaration'' in place of ''emergency classification'' except when summarizing an earlier document.

during drills and exercises remains high, there have been several instances during actual events in which classifications were inappropriately delayed. Although these actual events did not warrant public protective measures, this may not always be the case.

The NRC considered the following options for addressing this regulatory problem. The first option, take no action, was rejected because it would not address the regulatory problem. The second option, continue to rely on the industry's voluntary PI, was rejected because the existence of the PI has not prevented untimely classifications during actual emergencies. Although these occurrences were associated with Notification of Unusual Events or Alerts, the observed weaknesses could also have occurred under different circumstances in which the potential impact to the public could have been greater. The third option, issue regulatory guidance, was rejected because although regulatory guidance is an appropriate mechanism for identifying acceptable means for complying with regulatory requirements, there was no regulatory requirement that emergency declarations meet any particular timeliness criterion. The fourth option, an amendment of the regulations, is the best course of action to ensure that licensees are aware that they are responsible for completing emergency declarations in a timely manner in the event of a radiological emergency.

The NRC also considered providing either a *performance* criterion or a *capability* criterion. Similar to the notification timeliness criterion in Appendix E, Section IV.D.3., in which the NRC requires licensees to be capable of notifying responsible State and local governmental agencies within 15 minutes after declaring an emergency, the NRC opted to propose a *capability* criterion, rather than an inflexible *performance* criterion. This approach allows licensees some degree of flexibility during an actual radiological emergency in addressing extenuating circumstances that may arise when an emergency declaration may need to be delayed in the interest of performing plant operations that are more urgently needed to protect public health and safety. These delays could be found acceptable if they did not deny State and local authorities the opportunity to implement actions to protect the public health or safety under their emergency plans and the cause of the delay was not reasonably within the licensee's ability to foresee and prevent. Based upon these considerations, the NRC is amending Part 50, Appendix E, Section IV.C, to address this issue by providing a *capability* criterion. These changes are discussed in Section IV of this document.

In the proposed rule, the NRC asked for public comment on whether the NRC should add requirements for non-power reactor licensees to assess, classify, and declare an emergency condition within 15 minutes and promptly declare an emergency condition. The NRC received several comments on these issues. The NRC believes there may be a need for the NRC to be aware of security related events early on so that an assessment can be made to consider the likelihood that the event is part of a larger coordinated attack.

The NRC also believes declarations for non-security related events should be made in a timely fashion, but not necessarily with the same urgency as security related events. For example, in 2008 a tornado damaged the building that houses a non-power reactor. Assistance from the NRC, which was coordinated between NRC headquarters and NRC Region IV, could have been deployed earlier and with more detailed information if the emergency information was available to the NRC earlier.

However, the NRC has determined that further analysis and stakeholder interactions are needed prior to changing the requirements for non-power reactor licensees. Therefore, the NRC has not included requirements in the final rule for non-power reactor licensees to assess, classify, and declare an emergency condition within 15 minutes and promptly declare an emergency condition.

3. Emergency Operations Facility—Performance Based Approach

Several nuclear power reactor licensees have submitted requests for NRC approval to combine EOFs for plants they operate within a State or in multiple States into a consolidated EOF. In some instances, the consolidated EOF is located at a substantial distance from one or more of the plant sites and is no longer considered a ''near-site'' facility, as required by former §§ 50.47(b)(3), 50.47(d)(1), 50.54(gg)(1)(i), and Appendix E, Sections II.H., IV.E.8., IV.E.9.c., and IV.E.9.d. Guidance documents, including NUREG–0696, ''Functional Criteria for Emergency Response Facilities,'' dated February 1981, and NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' Supplement 1, ''Requirements for Emergency Response Capabilities,'' dated January 1983, that provide criteria for establishing and locating emergency response facilities also refer to the EOF as a near-site facility. However, the regulations and guidance did not explicitly define the term ''near-site.'' This regulatory structure resulted in confusion for licensees with reasonable technical bases for moving or consolidating EOFs that would no longer be considered ''near-site'' and led to requests for exceptions to NRC guidance and exemptions from NRC regulations to move or consolidate their EOFs.

In addition, neither regulations nor guidance documents addressed the capabilities and functional requirements for a consolidated EOF, such as capabilities for handling simultaneous events at two or more sites, or having provisions for the NRC and offsite officials to relocate to a facility nearer the site if they desire. Thus, licensees have been uncertain about when they need to submit requests for exceptions or exemptions, which alternative approaches to existing EOF distance and other facility criteria may be acceptable, and what additional capabilities they need to address for a consolidated EOF. A regulatory mechanism (§ 50.54(q)) is already in place that allows licensees to make changes to their emergency plans without prior Commission approval when certain conditions are met. This mechanism could have been applied to consolidation of EOFs if clearer criteria had been established. In the absence of clear criteria, several recent licensee requests to consolidate EOFs have been evaluated by the NRC staff and reviewed by the Commission on a case-by-case basis.

Each nuclear power plant site is required to have an EOF where the licensee provides overall management of its resources in response to an emergency and coordinates emergency response activities with Federal, State, local, and Tribal agencies. The original EOF siting criteria called for the facility to be located near the nuclear power reactor site and imposed a 20-mile upper limit (later modified by the Commission to 25 miles) for the distance between the site and the EOF. This upper limit was generally considered to be the maximum distance from the nuclear power reactor site within which face-to-face communications between the licensee, offsite officials, and NRC staff could be facilitated, and which also permitted the timely briefing and debriefing of personnel going to and from the site. However, advances in computer and communication technology after the original EOF siting criteria were established now allow EOF functions to be effectively performed independent of

distance from the site. Computer based systems allow plant parameter, meteorological data, and radiological information for multiple sites to be collected, analyzed, trended, and displayed in a remotely located facility. Data and voice communications between the EOF and other onsite/offsite emergency response facilities can be addressed through a variety of independent systems, such as microwave, telephone, internet, intranet, and radio, which provide a high degree of availability and reliability.

Furthermore, nuclear utility consolidation has resulted in initiatives to standardize fleet emergency plans, use consolidated EOFs, and staff EOFs by designated corporate personnel. Standardized plans, implementing procedures, and accident assessment tools, such as a common dose projection model, allow emergency responders in a consolidated facility to effectively perform their functions for multiple sites, even if the EOF is not a near-site facility. Consolidated facilities eliminate the need to duplicate work space, displays, communication networks, and other capabilities for each site. Consolidated facilities can also be located at or near corporate offices where nuclear support personnel designated to fill EOF positions can respond more quickly.

The Commission, in the SRM to SECY–04–0236, ''Southern Nuclear Operating Company's Proposal to Establish a Common Emergency Operating Facility at Its Corporate Headquarters,'' dated February 23, 2005, directed the NRC staff to consider resolving these issues through rulemaking. In that SRM, the Commission approved the proposal for a consolidated EOF for three nuclear power reactor sites operated by Southern Nuclear Operating Company at the company's corporate headquarters. The Commission also instructed the NRC staff to consider making ''the requirements for EOFs more performance based to allow other multi-plant licensees to consolidate their EOFs, if those licensees can demonstrate their emergency response strategies will adequately cope with an emergency at any one of the associated plants.''

To address the EOF ''near-site'' and consolidation issues, the NRC considered maintaining EOF distance criteria as guidance only and to specify other EOF criteria in guidance rather than in the regulations. However, providing these criteria as guidance only would not have ensured that future applicants would follow the criteria. Thus, an EOF could have been located within 10 miles of a site with no backup facility provided, or could have been located beyond 25 miles of a site without providing a facility closer to a site for NRC site team and offsite response personnel. An EOF could have been implemented without meeting the performance based criteria. A licensee could have relocated or consolidated an existing approved facility without meeting all or some of the criteria and without prior Commission approval as long as the licensee determined that the provisions of § 50.54(q) were met. Under these circumstances, an EOF could have been implemented that may not have provided all of the capabilities that the NRC believes are necessary for such a facility to be fully effective. Therefore, the NRC determined that this option would not have been appropriate.

The NRC also considered revising the regulations (and providing associated performance based criteria) to allow an EOF to be located more than 25 miles from a nuclear power reactor site without prior Commission approval. The capability of existing EOFs located more than 25 miles from a site to function as effective emergency response facilities has been demonstrated in numerous exercises and several actual events. However, the NRC is concerned that locating an EOF beyond 25 miles from a site could adversely impact the ability of licensee and offsite responders to fulfill their responsibilities (*e.g.,* due to increased response times to a remotely located facility or less effective communications with responders at other locations). The potential adverse impacts of the EOF location must be fully considered and addressed, including consideration of the needs of offsite officials who also report to the EOF. Therefore, the NRC determined that the option to allow licensees to locate EOFs more than 25 miles from a site without prior Commission review and approval would not have been appropriate.

In summary, the NRC is amending its regulations (and associated guidance) to establish performance based criteria for all EOFs based on requirements and conditions previously imposed by the Commission on these facilities. Licensees will need to obtain prior Commission approval and provide a facility closer to the site in situations where the EOF is more than 25 miles from a site. This approach will ensure that an EOF has the capabilities necessary to be fully effective regardless of its location with respect to the nuclear power plant site, and that provisions are in place for a facility closer to the site for use by NRC site teams and offsite responders. The NRC is also amending its regulations (and guidance) to remove the references to an EOF as a ''near-site'' facility and to incorporate specific EOF distance criteria into the regulations, as discussed in Section IV of this document.

In a conforming change, the NRC is revising § 52.79(a)(17) to clarify that combined license applications need not address the requirement governing TSCs, OSCs and EOFs in § 50.34(f)(2)(xxv). Instead, the requirements in Appendix E, Section IV.E.8.a.(i) apply. That section accurately reflects the need for the combined license application to address an EOF; by contrast § 50.34(f)(2)(xxv) requires only applicants for construction permits (and not combined licenses) to address an EOF. The NRC considered, as an alternative to modifying § 52.79(a)(17), correcting § 50.34(f)(xxv) to remove the language limiting the requirement to address an EOF to construction permit applications. The NRC decided not to adopt that approach, but instead have the general requirements for EP, including Appendix E, apply to combined license applications by virtue of § 52.79(a)(21).

4. Evacuation Time Estimate Updating

The former § 50.47(b)(10) and Part 50, Appendix E, Sections II.G, III, and IV, required nuclear power plant operating license applicants to provide evacuation time estimates (ETEs) for the public located in the plume exposure pathway EPZ. These ETEs are used in the planning process to identify potential challenges to efficient evacuation, such as traffic constraints, and, in the event of an accident, to assist the onsite and offsite emergency response managers in making appropriate decisions regarding the protection of the public. The former regulations did not require any review or revision of ETEs following the initial licensing of the plant. Although some licensees do revise ETEs based on updated census data, the use of ETEs in evacuation planning is inconsistent and generally does not affect the development of public protective action strategies.

Nuclear power reactor operating license applicants are responsible for developing the ETE analysis for their respective sites. They submit the analysis to the NRC in support of their emergency plans, usually as a stand-alone document. Within the ETE analysis, there are multiple ETE values for different scenarios developed for combinations of variables and events under varying conditions. For example,

there are different ETE values based on season (summer or winter), day of the week (midweek or weekend), time of day (daytime or evening), and weather conditions (normal or adverse). Applicants include the results of the ETE analysis in the onsite emergency plan and in the emergency plan implementing procedures for protective action recommendations. The ETEs are also in the offsite emergency plans for the State and local governments within the plume exposure pathway EPZ.

In NUREG/CR–6953, Vol. 1, ''Review of NUREG–0654 Supplement 3, Criteria for Protective Action Recommendations for Severe Accidents,'' dated December 2007, the NRC presented the results of a study of its protective action recommendation guidance. The NRC concluded in the study that ETE information is important in developing public protective action strategies and should be used to identify enhancements to evacuation plans. The effectiveness of protective action recommendation strategies is sensitive to the ETE, and therefore, it is important to reduce the uncertainties associated with ETE numerical values. Improving the accuracy of ETE values helps licensees recommend and offsite officials determine the most appropriate protective action. For instance, in the study, the NRC determined that for some scenarios sheltering may be more protective than immediate evacuation if the evacuation time is longer than a few hours, depending on site-specific factors. Further, the NRC concluded that the effect of population change upon evacuation times should be understood by OROs and incorporated into offsite protective action strategies.

To address this issue, the NRC is amending the regulations to require licensees to assess changes to the EPZ population. The NRC believed that changes in infrastructure, or addition of a large subdivision to the EPZ, could also impact the ETE. The NRC consulted with Sandia National Laboratories (SNL), who are experts in emergency evacuations and have researched and developed several NRC studies related to evacuation (*e.g.,* NUREG/CR–6863, ''Development of Evacuation Time Estimates for Nuclear Power Plants,'' dated January 2005, NUREG/CR–6864, ''Identification and Analysis of Factors Affecting Emergency Evacuations,'' January 2005, and NUREG/CR–6953). Based upon their expert opinion, SNL confirmed that the major contributor to changes in ETE values is changes in population. Population changes have a direct correlation to the volume of vehicles on the roadway, which directly affects the roadway capacity. Although changes in infrastructure can impact roadway capacity, changes sufficient to impact the ETE by more than a few minutes, such as the addition of an interstate highway, take many years to plan and construct. Because population changes occur continuously, change in population is considered the more appropriate metric to monitor the potential effect on roadway capacity. Therefore, the NRC is revising the regulations to explicitly require ETE updates based on population changes that cause the ETE values within the analysis to exceed a specified threshold.

The NRC also considered using guidance as a means to solve the problem of the lack of specificity in regulations directing applicants and licensees on the periodicity for updating ETEs. Although the availability of more detailed guidance would provide applicants and licensees with the tools to better update their ETEs, this option would not have provided the regulatory means for enforcing the desired frequency of ETE updates and consistency of ETE determinations.

Therefore, the NRC is amending § 50.47(b)(10) and Part 50, Appendix E, Section IV, to require the periodic review and updating of ETEs. The NRC guidance for completing the ETE analysis and required ETE updates is contained in NUREG/CR–7002, ''Criteria for Development of Evacuation Time Estimate Studies.''

5. Amended Emergency Plan Change Process

Applicants for operating licenses under Part 50 for nuclear power reactors, research reactors, and certain fuel facilities, and early site permits (as applicable) and combined licenses under Part 52 for nuclear power plants, are required by regulation to develop emergency plans that meet the requirements of Appendix E to Part 50 and, for nuclear power reactor license applicants, the standards of § 50.47(b). After the facility license was issued, the holder of the license was required by the former § 50.54(q) to follow and maintain in effect emergency plans that met the requirements of Appendix E and, for nuclear power reactor licensees, the standards of § 50.47(b). The former § 50.54(q) also provided a process under which a licensee could make changes to its approved emergency plan without prior NRC approval provided the changes would not decrease the effectiveness of the emergency plan as approved and the plan, as modified, would continue to meet applicable regulations. However, the NRC determined that the language of the former § 50.54(q) did not clearly describe the requirements the NRC intended to impose on licensees, leading to confusion and inefficiencies in implementation.

A licensee must follow and maintain the effectiveness of its emergency plan if the NRC is to continue to find, under § 50.54(s)(2)(ii), that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The EP regulations generally refer to the onsite emergency plan as a stand-alone document. However, an emergency plan relies upon facility capabilities, equipment, and resources that are typically outside of the control of the licensee's emergency planning organization. The NRC has identified several occurrences in which licensee personnel outside of the emergency planning group have changed the status of capabilities and resources under their cognizance without considering the impact on the effectiveness of the emergency plan or without alerting the emergency planning group.

Several enforcement actions in the past few years have been associated with EALs being rendered ineffective by configuration changes made to instruments referenced in an EAL without the change being reflected in the EAL, or without a compensatory action being put into place. Examples include modifications to installed seismic instruments that eliminated the direct readout of acceleration needed for classifying a seismic event and changes in reactor vessel level criteria (in a boiling water reactor) being made without a conforming change being made to the EAL. In another finding, concrete barriers installed in a security-initiated change blocked a site access road required by the emergency plan to be used for site evacuation. Another licensee failed to provide adequate oversight on utility (external to the plant) personnel maintaining the site's ANS, resulting in degradation of that system and subsequent enforcement actions. Based on its experience in reviewing root cause analyses and corrective actions associated with inspection findings, the NRC believes that an underlying cause of these occurrences is often that the licensees' configuration control programs did not adequately consider the impact of configuration changes on the effectiveness of their emergency plans.

The NRC determined that the phrase ''maintain in effect'' in the former § 50.54(q) was not adequately clear in conveying the NRC expectation that an effective emergency plan also requires maintaining the various capabilities and resources identified and relied on in the

plan. The phrase ''maintain in effect,'' as applied to an emergency plan in § 50.54(q), has two senses: The first is that the plans are in force; the second is that the plans can achieve the desired result of providing reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Accordingly, the NRC is amending § 50.54(q) to clarify that the regulatory intent is both senses by requiring licensees to follow and ''maintain the effectiveness'' of their approved emergency plans.

The former § 50.54(q) also provided a process under which a licensee could make changes to its approved emergency plan without prior NRC approval provided the changes did not decrease the effectiveness of the emergency plan as approved and the plan, as modified, continued to meet applicable regulations. Prior NRC approval was required for any change that decreased the effectiveness of the emergency plan. The NRC and licensees experienced significant difficulties in implementing this portion of § 50.54(q) because the former rule language did not define what constituted a decrease in effectiveness of an emergency plan nor did it identify the type of changes that would constitute a decrease in effectiveness of the plan. The lack of clear evaluation criteria resulted in regulatory inefficiencies, such as licensees submitting for review changes that did not rise to the level requiring prior NRC approval and enforcement actions due to licensees failing to submit changes that were later deemed to warrant such a review. A large fraction of the enforcement actions in the EP Cornerstone can be attributed to these findings.

The NRC attempted to resolve this issue through the publication of regulatory guidance. In 1998, the NRC issued EPPOS–4, ''Emergency Plan and Implementing Procedure Changes,'' to provide guidance to NRC inspectors regarding their review of licensees' emergency plan changes. In 2004, the NEI submitted two white papers proposing a definition of ''decrease in effectiveness'' for NRC consideration. The NRC could not reach consensus with NEI and thus, did not endorse the NEI guidance. In 2005, the NRC withdrew EPPOS–4 and issued RIS 2005–02, ''Clarifying the Process for Making Emergency Plan Changes,'' dated February 14, 2005, to (1) Clarify the meaning of ''decrease in effectiveness,'' (2) clarify the process for making changes to an emergency plan, and (3) provide some examples of changes that are not decreases in effectiveness. Although RIS 2005–02 provided useful guidance, the NRC and NEI have continued to discuss ways to improve the § 50.54(q) change process, including the use of a regulatory framework parallel to that of § 50.54(a)(3) for quality assurance programs, § 50.54(p)(2) for safeguards plans, and § 50.59, ''Changes, Tests, and Experiments.''

During the development of this rulemaking, the NRC identified a concern regarding the process to be used by the NRC for reviewing proposed emergency plan changes. The former § 50.54(q) directed the licensee to submit such changes under the provisions of § 50.4, which provides the procedures for making certain submissions to the NRC. Some confusion existed as to whether all proposed emergency plan changes submitted under § 50.4 would result in a decrease in effectiveness and whether Commission review of such submissions was necessary. The final rule specifies that the license amendment process of § 50.90 is to be used when submitting a proposed emergency plan change that the licensee has determined constitutes a reduction in effectiveness of the plan. The final rule language addresses this clarification. (*See* Section IV of this document for further discussion.)

The NRC also considered other options for addressing the § 50.54(q) problems. Using a voluntary industry initiative was rejected because the NRC and NEI had yet to agree on the best approach to resolve the problems. Issuing more regulatory guidance was rejected because that approach had been tried but had not resolved the problems. The NRC determined that an amendment to the regulations, supplemented as necessary by regulatory guidance, is the best course of action to ensure that (1) The effectiveness of the emergency plans is maintained, (2) changes to the approved emergency plan are properly evaluated, and (3) any change that reduces the effectiveness of the plan is reviewed by the NRC prior to implementation.

Accordingly, the NRC is amending § 50.54(q) to replace the existing language and is making conforming changes in Part 50, Appendix E, Section IV.B. The NRC is issuing RG 1.219, ''Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors,'' to describe a method acceptable to the NRC for demonstrating compliance with the final rule.

6. Removal of Completed One-Time Requirements

The NRC is eliminating several regulatory provisions that required holders of licenses to take certain one-time actions to improve the state of EP following the Three Mile Island incident in 1979. These actions are complete and the requirements are no longer binding on any current licensee. Corresponding requirements for license applicants are provided in §§ 50.33 and 50.34.

The requirements being removed are:

(1) Section 50.54(r), which required licensees of research or test reactors to submit emergency plans to the NRC for approval by September 7, 1982, and, for the facilities with an authorized power level of less than 2 MW thermal, by November 3, 1982. There is no longer a need for this provision because this requirement has expired. The NRC is deleting this requirement and designating the section as ''reserved.''

(2) Section 50.54(s)(1), which required nuclear power reactor licensees to submit State and local governmental emergency plans within 60 days of the November 3, 1980, effective date of the rule that added § 50.54(s)(1) to Part 50, and that date has elapsed. That portion of § 50.54(s)(1) that discussed the size of the EPZs was not identified for deletion in the proposed rule, but after further review the NRC has determined that it does not need to be retained. The size of EPZs for nuclear power reactors is addressed in other parts of the NRC's regulations. Section 50.33(g), which is applicable to the content of new Part 50 and Part 52 applications (with complete and integrated emergency plans), contains the same language regarding the size of EPZs as found in § 50.54(s)(1). Section 50.47(c)(2) also has the same language regarding the size of EPZs as §§ 50.33(g) and 50.54(s)(1). Moreover, Part 50, Appendix E, Section I, footnote 1, addresses the size of EPZs with language equivalent to §§ 50.33(g) and 50.54(s)(1). Therefore, the NRC is deleting § 50.54(s)(1) in its entirety and designating the section as ''reserved.''

(3) Section 50.54(s)(2)(i), which required that nuclear power reactor licensee, State, and local emergency response plans be implemented by April 1, 1981. There is no longer a need for this provision because this requirement has expired. The NRC is deleting § 50.54(s)(2)(i), designating the section as ''reserved.''

(4) Section 50.54(u), which required nuclear power reactor licensees to submit, within 60 days of the November 3, 1980, effective date of the rule that added § 50.54(u) to Part 50, to the NRC plans for coping with emergencies that meet the standards in § 50.47(b) and the requirements of Appendix E. There is no longer a need for this provision because this requirement has expired. The NRC is deleting this requirement

and designating the section as ''reserved.''

The NRC is eliminating these completed one-time requirements in the interest of regulatory clarity. Eliminating these requirements will not relax any currently effective regulatory requirement and will cause no regulatory burden on any current or future licensee or applicant.

## III. Public and Stakeholder Input to the Final Rule

### *A. Public and Stakeholder Meetings*

As part of its comprehensive assessment of the NRC's EP regulations and guidance and development of this rule, the NRC staff met with internal and external stakeholders, including FEMA management, on numerous occasions including the following:

1. Meetings with NRC regional EP inspectors in January 2005 and January 2006;
2. Meetings with State, local, and Tribal governments and nuclear power industry representatives at the NREP Conference on April 11–14, 2005, March 27–30, 2006, and April 7–10, 2008;
3. Public meeting with interested stakeholders on August 31 and September 1, 2005;
4. Public meeting with non-governmental organizations (NGOs) on May 19, 2006;
5. Public meeting with the NEI/nuclear power industry representatives on July 19, 2006;
6. Regional meetings with State and local representatives and nuclear power industry working groups that started in 2007;
7. NRC Regulatory Information Conference on March 16, 2007;
8. Public meeting with external stakeholders on March 5, 2008;
9. Meeting with nuclear power industry representatives at the 2008 NEI EP and Communications Forum;
10. Public meeting with external stakeholders on July 8, 2008;
11. Public meetings to discuss the proposed rule on enhancements to EP regulations and related guidance documents in June 2009 held jointly by the NRC and FEMA (a total of 11 public meetings);
12. Public meeting to discuss the proposed rule on enhancements to EP regulations and related guidance documents on September 17, 2009;
13. Commission meeting to provide an overview of comments received by the NRC and FEMA during the proposed rule public comment period and remaining milestones in the EP rulemaking process on December 8, 2009; and
14. Public meeting to discuss feedback on proposed implementation dates for the final rule on November 15, 2010.

The NRC also met routinely with representatives of FEMA to coordinate issues of mutual interest and to keep them informed of NRC EP activities. These meetings allowed NRC and FEMA to collaborate on rulemaking and guidance issues, and to ensure alignment and regulatory consistency. In addition, FEMA attended the NRC public meetings regarding the NRC's EP rulemaking, and co-hosted 11 of the public meetings with the NRC held after the issuance of the proposed rule.

### *B. Public and Stakeholder Comments Received*

At the April 11, 2005, NREP Conference, the NRC and FEMA conducted a workshop with stakeholders. The workshop covered a broad range of EP topics. Unanswered stakeholder comments and questions were recorded by NRC staff, and the NRC and FEMA responded to those questions and comments in ''Discussion of NREP 'Parking Lot' Items.''

The NRC conducted a public meeting on August 31–September 1, 2005, to obtain input regarding EP requirements and guidance for commercial nuclear power plants. The first day of meetings involved a roundtable discussion of topics related to the review of EP regulations and guidance. During the second day, the NRC staff and stakeholders addressed the ''Discussion of NREP 'Parking Lot' Items'' from the April 2005 NREP conference and other stakeholder comments and questions. The NRC requested comments in writing before the August 31–September 1, 2005, meeting and also received comments at the meeting. In addition to comments transcribed from the 2-day public meeting, the NRC accepted written comment submissions until October 31, 2005.

The NRC and FEMA responded to generic comments from the August 31–September 1, 2005, meeting and comments received thereafter in ''Summary and Analysis of Comments (Received Between August 31 and October 31, 2005).'' Site-specific comments from the public meeting were addressed in ''Summary and Analysis of Site-Specific Comments (Received Between August 31 and October 31, 2005).''

The NRC also received comments on the review of the EP regulations and guidance for nuclear power plants at public meetings with stakeholders on May 19, 2006, and July 19, 2006. The May 19, 2006, meeting was transcribed. The NRC staff informed the meeting participants that their comments would be presented to the Commission in a September 2006 SECY paper. These comments were provided to the Commission in an attachment to SECY–06–0200 and, like the stakeholder comments from 2005, were used to inform the staff's recommendations to the Commission in SECY–06–0200.

The NRC received three comment letters that focused on the draft preliminary rule language posted for comment on *http://www.regulations.gov* on February 29, 2008. One comment letter was submitted by the Commonwealth of Pennsylvania, one was submitted by NEI, and one was submitted by the Union of Concerned Scientists on behalf of several NGOs. These comments were addressed as part of the development of the proposed rule.

The proposed rule was published on May 18, 2009, and the public comment period closed on October 19, 2009. The NRC received a total of 94 submittals and from these submittals, 687 individual comments were identified. Some of the comments and the NRC's responses are discussed throughout this document. A detailed discussion of the public comments and the NRC's responses is contained in a separate document (*see* Section IX of this document). The NRC also received comments on issues that are outside the scope of this rule and on regulatory provisions that are not being revised in this rule. The NRC determined that these comments did not support changing the scope of the final rule.

### *C. Proposed Rule Specific Request for Comments*

In the proposed rule, the NRC requested comments on whether the NRC should issue regulations requiring that licensees train responders on and implement the Incident Command System (ICS) to improve the interface with OROs during an event at a nuclear power plant. Homeland Security Presidential Directive 5 (HSPD–5) requires all Federal departments and agencies to adopt the National Incident Management System (NIMS) and use it in their individual incident management programs and activities, as well as in support of all emergency response actions taken to assist State, Tribal, and local governments. Although NIMS represents a core set of doctrines, concepts, principles, terminology, and organizational processes that enables incident management, it also utilizes the ICS for command, operations, planning, logistics, and finance/administration functions to manage domestic incidents.

The NIMS/ICS are also widely used by State, tribal, and local governments, including when these entities are engaged in emergency response activities with nuclear power reactor licensees. However, licensees are not currently required to adopt NIMS/ICS, so the potential exists for confusion or miscommunication between OROs who utilize NIMS/ICS as an incident management system and the associated power reactor licensees who do not use the same system. The NRC observed some of these coordination challenges during the nuclear power industry's voluntary three year EP hostile action drill program initiative, which was conducted in response to BL–05–02 and concluded in December 2009. Ideally, both OROs and licensees should use the same or a compatible incident management system to effectively communicate with each other and improve their individual and joint response capabilities.

Nevertheless, the NRC recognizes that HSPD–5 does not require the private sector to adopt NIMS/ICS. The NRC also understands that requiring its nuclear power reactor licensees to implement NIMS/ICS would impose upon licensees a specific type of incident command structure stipulated by HSPD–5. Any future changes to HSPD–5 or NIMS/ICS could require corresponding rulemaking changes by the NRC. Moreover, if the NRC were to compel its nuclear power reactor licensees to use a specific incident management program, that program still could be different than incident management systems adopted by OROs that comply with laws promulgated by other governmental organizations. Thus, despite the NRC's efforts to promote consistency, these potentially conflicting regulatory authorities could prove to be incompatible during ICS activities at the reactor sites. For example, the incident commander during the onset of a hostile action incident at a nuclear facility will most likely be a local law enforcement officer, whose authority derives from the local or State jurisdiction and not from the NRC.

Section 50.47(b)(6) of the NRC's regulations states that ''Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.'' In this final rule, the NRC is amending Part 50, Appendix E, Section IV.A.7, to require licensees to include in their emergency plans the ''[i]dentification of, and assistance expected from, appropriate State, local, and Federal agencies with responsibilities for coping with emergencies, including hostile action at the site.'' Together, these regulations require licensees to know which OROs would respond during an emergency and how to communicate with those OROs. A licensee's use of a command structure that is compatible with the applicable OROs' command structure (*e.g.,* NIMS/ICS) would enhance communication and coordination between OROs and licensees and facilitate the licensee's compliance with the § 50.47(b)(6) standard and the requirements of Appendix E, Section IV.A.7. The NRC's regulations, as amended by this final rule, contain adequate requirements to ensure that licensee compliance with these regulations would result in effective communication between OROs and licensees during emergencies. Therefore, the NRC is not requiring that NIMS/ICS become the sole means of incident command management for licensees.

Comments received by the NRC in response to other specific requests for comments in the proposed rule are addressed in Sections II and IV of this document.

## IV. Section-by-Section Analysis

The Commission is amending portions of § 50.47, ''Emergency plans;'' § 50.54, ''Conditions of licenses;'' Part 50, Appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities;'' and § 52.79, ''Contents of applications; technical information in final safety analysis report.''

### *1. Section 50.47 Emergency Plans*

The NRC is amending § 50.47(b)(3) to remove the reference to the EOF as a ''near-site'' facility. The final rule provides criteria in Part 50, Appendix E, Section IV.E.8, regarding EOF distance from a nuclear power reactor site and for a performance based approach for EOFs, specifying that these facilities must meet certain functional requirements rather than requiring that they be located within a certain distance of the plant. The intent of this change is discussed in the section on changes to Appendix E, Section IV.E.8. (A discussion of this issue is also provided in Section II.B.3 of this document.)

The final rule amends § 50.47(b)(10) to require licensees to review and update their ETEs periodically. Changes to Appendix E to Part 50 provide the required frequency and details of the ETE updates and submissions to the NRC. Although requirements for ETEs are found in both § 50.47(b) and in Appendix E to Part 50, the level of detail between them differs. Section 50.47(b) establishes the EP planning standards that licensees must meet, whereas Appendix E sets forth more detailed implementation requirements. (A discussion of this issue is also provided in Section II.B.4 of this document.)

This new requirement ensures that ETEs are reviewed periodically to determine whether population changes have caused significant changes in the ETE values. The NRC review of ETE updates will ensure they are performed routinely, are consistent across the industry, and are technically sound. The NRC guidance will provide more details of NRC expectations for development of an adequate ETE analysis, as well as provide NRC reviewers with guidance on the review of ETE updates. The NRC expects that the updated ETEs will be shared with OROs to be incorporated into offsite protective action strategies.

The NRC received several comments that suggested that the proposed rule language of § 50.47(b)(10) be revised to accommodate changes to ETE update criteria. Two commenters stated that the threshold for ETE updates should be based on a population sensitivity study that would assess the effect of a population change on the ETE. Two commenters argued that the ETE updates should be based on changes in population density rather than absolute population change. The NRC agrees that the ETE update criteria should be changed and should be based on the impact that a population change has on the ETE instead of a percent change in population. However, the details of the revised ETE update criteria should be included in Appendix E to Part 50 where more detailed implementation requirements are found. Two commenters argued that the proposed rule language should be revised to eliminate the requirement for submission of ETEs to the NRC for review and approval. The NRC believes that NRC review is necessary for consistent implementation, but the NRC will not approve the ETE updates. See the discussion under Appendix E to Part 50 in this section of the document for further information on this topic.

The NRC is amending § 50.47(d)(1) to remove the reference to the EOF as a ''near-site'' facility. The final rule provides criteria in Part 50, Appendix E, Section IV.E.8, regarding EOF distance from a nuclear power reactor site and for a performance based approach for EOFs, specifying that these facilities will need to meet certain functional requirements rather than requiring that they be located within a certain distance of the plant. The intent of this change is discussed in the section on changes to Appendix E, Section IV.E.8. (A

discussion of this issue is also provided in Section II.B.3 of this document.)

*2. Section 50.54 Conditions of Licenses*

The NRC is amending § 50.54(q) in its entirety. Section 50.54(q)(1) defines four terms whose meanings are limited to application within § 50.54(q) in the final rule. Section 50.54(q)(1)(i) defines a ''change'' to the emergency plan as an action that results in modification or addition to, or removal from, the licensee's emergency plan. All such changes are subject to § 50.54(q) unless another regulatory change process is controlling. For example, a plant configuration change that removes a piece of equipment identified and relied upon in the emergency plan could also be subject to the requirements of § 50.59 and a technical specification change may also be involved.

In the proposed rule, § 50.54(q)(1)(i) defined what would have constituted a change to the emergency plan. The NRC received comments that asked the NRC to remove the phrase ''resources, capabilities, and methods identified in the plan'' from the final rule language for this definition. The NRC agrees with these comments and made this change to the final rule to place emphasis on the content of the emergency plan. Although resources, capabilities, and methods are identified in the emergency plan, not all of these will necessarily be under the control of the licensee. For example, the licensee's emergency plan may identify the plans and capabilities of OROs. A change to an ORO plan is not subject to the § 50.54(q) change process, but the modifications to the licensee's emergency plan to reflect that change are subject to the § 50.54(q) change process.

The § 50.54(q)(1)(ii) definition of ''Emergency plan'' in the final rule encompasses any document that describes the programmatic methods that the licensee uses to maintain preparedness and to respond to emergencies, and to demonstrate compliance with the requirements of Appendix E, and for nuclear power reactors, the planning standards of § 50.47(b). In response to a stakeholder comment on § 50.54(q)(1)(ii) in the proposed rule, the NRC has revised this definition in the final rule by removing the proposed reference to ''emergency planning functions,'' and replacing it with ''methods for maintaining emergency preparedness and responding to emergencies.'' Sub-tier documents, such as emergency plan implementing procedures, are not ordinarily subject to the § 50.54(q) change process because these procedures generally only provide instructions in performing the programmatic methods identified and described in the emergency plan. However, if a licensee were to relocate a programmatic description to another document, that description will remain subject to the § 50.54(q) change process. For example, if a licensee were to relocate the details of its emergency classification scheme from the emergency plan to a wall chart posted in the control room, the wall chart would be subject to the § 50.54(q) change process. The definition also emphasizes, by incorporation, the role of the licensee's original emergency plan approved by the NRC in minimizing the likelihood that a series of incremental changes, many of which may not have been reviewed by the NRC, over time will constitute a reduction in effectiveness of the NRC approved emergency plan.

Section 50.54(q)(1)(iii) in the final rule defines the term ''emergency planning function'' in terms of a capability or resource necessary to prepare for and respond to a radiological emergency. During the development of the EP Cornerstone of the ROP, a group of EP subject matter experts, including NRC staff and nuclear power industry stakeholders, with input from the public, developed a series of planning standard functions that are used in determining the significance of inspection findings. These planning standard functions are paraphrases of the broadly-worded § 50.47(b) planning standards and the corresponding requirements in Appendix E to Part 50 in terms of the significant functions that need to be accomplished, or the capabilities that need to be in place, to maintain the effectiveness of a licensee's emergency plan and emergency response capability. Within the EP Cornerstone, the significance of inspection findings depends on whether the planning standards can be accomplished (*i.e.,* loss of planning standard function) or can be accomplished only in a degraded manner (*i.e.,* degraded planning standard function). The characterization of a reduction in effectiveness in the final rule capitalizes on this earlier effort in that any degradation or loss of a planning standard function is deemed to constitute a reduction in effectiveness. The NRC is using the phrase ''emergency planning function'' in lieu of ''planning standard function'' as used in the ROP to allow the definition to be applicable to licensed facilities that are subject to Appendix E, but are not subject to the planning standards of § 50.47(b). The emergency planning functions have been established in RG 1.219 along with examples of typical emergency plan changes that are expected to constitute a reduction in effectiveness and examples of changes that are not.

The emergency planning functions do not replace or supplement the regulations upon which they were based and, as such, compliance with these functions is not required. They are only used to differentiate between changes that the licensee is allowed to make without prior NRC approval and those that require prior NRC approval. The NRC did not establish these emergency planning functions in regulations because the underlying regulations already exist, and the expression of the emergency planning functions differs between nuclear power reactors, non-power reactors, and fuel facilities licensed under Part 50 or Part 52. The RG 1.219 discusses these emergency planning functions for nuclear power reactor licensees.

In response to the definition of ''emergency planning function'' in proposed § 50.54(q)(1)(iii), the NRC received a stakeholder comment that suggested that the planning standards of § 50.47(b) should be used for determining reductions in effectiveness, in lieu of the proposed emergency planning functions, since compliance is based on meeting planning standards. The NRC disagrees with this comment. The § 50.54(q) change process establishes a two factor test to establish whether the licensee has the authority to make a change without prior NRC approval. First, the plan as modified must continue to comply with the requirements of Appendix E, and for power reactors, the planning standards of § 50.47(b). Second, the licensee must establish that the change does not reduce the effectiveness of the emergency plan. These are two different prerequisites. Compliance with the requirements of Appendix E, and for power reactors, the planning standards of § 50.47(b), satisfies the first factor, but it doesn't necessarily meet the second factor.

Under § 50.47(a)(1)(i), an operating license will be issued only if the NRC finds that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. During the licensing process, the licensee or the NRC may have identified planning constraints and vulnerabilities that required the licensee to commit to site-specific capabilities and resources beyond those identified in generic regulatory guidance as meeting the requirements of Appendix E, and for

nuclear power reactor licensees, the planning standards of § 50.47(b). After receiving its license, a licensee may have identified newly developed planning or response constraints, or self-identified weaknesses in its emergency plan, and implemented corrective actions beyond that identified in its emergency plan. For example, an applicant having a site with complex meteorological regimes or complex topography may have been required to establish a more advanced emergency dose assessment capability. Because these extensions to generic guidance were found to be necessary to meet the broadly worded requirements in Appendix E, and for nuclear power reactor licensees, the planning standards of § 50.47(b), a licensee seeking to relax these requirements needs to determine that the emergency plan, as modified, can continue to be effective. This will generally require that the licensee establish that the considerations that made the site-specific requirements necessary are no longer applicable to that site, or require an alternative approach that maintains the plan's effectiveness. Thus, simply meeting the requirements of Appendix E, and for power reactors, the planning standards of § 50.47(b), is not necessarily sufficient to prevent a reduction in the plan's effectiveness. For these reasons, the requirements of Appendix E, and for power reactors, the planning standards of § 50.47(b), alone cannot be used for determining reductions in effectiveness.

Section 50.54(q)(1)(iv) in the final rule defines the term ''reduction in effectiveness'' as a change to the emergency plan that results in a reduction of the licensee's capability to perform an emergency planning function in the event of a radiological emergency. The phrase ''reduction in effectiveness'' is an evaluation concept that is used in § 50.54(q) to differentiate between changes that the licensee is allowed to make without prior NRC approval and those that require prior NRC approval. A determination that a change may result in a reduction in effectiveness does not imply that the licensee could no longer implement its plan and provide adequate measures for the protection of the public. The NRC may approve a proposed emergency plan change that the licensee determined to be a reduction in effectiveness if the NRC can find that the emergency plan, as modified, continues to meet the requirements of Appendix E, and for nuclear power reactor licensees, the planning standards of § 50.47(b), and continues to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. ''Radiological emergency'' as used in § 50.54(q)(1)(iv) in the final rule means any condition that results in the declaration of any ECL and the implementation of the licensee's emergency plan. A nuclear power reactor licensee evaluating whether a particular emergency plan change constitutes a reduction in effectiveness is expected to consider the spectrum of accidents addressed in the planning basis described in NUREG–0654. In making this determination, licensees of non-power reactors and fuel facilities licensed under Part 50 must base their evaluations on the planning bases for their respective facilities.

In the proposed rule, § 50.54(q)(1)(iv) defined the term ''reduction in effectiveness.'' The NRC received a stakeholder comment that suggested that the definition of ''reduction in effectiveness'' should establish a threshold based on a ''significant reduction'' rather than a reduction. The comment cited, as an example, the use of ''more than a minimal increase'' in the § 50.59 change process. The NRC agrees that the § 50.59 change process does incorporate the phrase ''more than a minimal amount.'' However, this phrase is always used in conjunction with a numerical criterion (*e.g.,* § 50.59(c)(2)(i) through (iv)). With few exceptions, the planning standards of § 50.47(b) and the requirements of Appendix E do not establish numerical requirements. Other criteria in § 50.59 are related to any change (*e.g.,* § 50.59(c)(2)(v) through (vi) and (viii)). The NRC has determined that any change that reduces the effectiveness of the licensee's capability warrants prior NRC review; therefore, the NRC disagrees with the comment. The licensee is authorized to make changes without prior approval up to the point at which effectiveness is reduced. This standard is reflected in the final rule language.

Regulations in Parts 50 and 52 require applicants for licenses to develop emergency plans that meet the requirements of Appendix E, and for nuclear power reactors, § 50.47(b), as applicable, during facility licensing. A holder of a license under Part 50 or a combined license under Part 52 after the Commission makes the finding under § 52.103(g) is required by § 50.54(q)(2) in the final rule to follow and maintain the effectiveness of its emergency plan. The § 50.54(q)(2) references to Appendix E and § 50.47(b), as applicable, extend the applicability of these requirements as a condition of the facility license. The NRC expects licensees to identify conditions and situations that could reduce the effectiveness of its emergency plan, and to take corrective and/or compensatory actions to restore and maintain the requisite effectiveness.

In the proposed rule, § 50.54(q)(2) would have required licensees to follow and maintain the effectiveness of the emergency plan. The NRC received a stakeholder comment that stated that requiring a licensee to maintain an emergency plan effective under § 50.54(q)(2) is inconsistent with the NRC approving a change that reduces the effectiveness of the emergency plan as required by § 50.54(q)(4). Paragraphs (3) and (4) of § 50.54(q) address emergency plan changes that are intentional on the part of the licensee, whereas a non-compliance with § 50.54(q)(2) is generally the result of a licensee failure to follow the requirements of its emergency plan (*e.g.,* failure to notify OROs during an actual event) or failure to take action to address conditions, from whatever cause, that reduce the effectiveness of the emergency plan (*e.g.,* an offsite fire department identified and relied upon in the emergency plan is no longer available to come to the site, and the licensee hasn't taken timely corrective actions to restore the capability). The licensee's determination of a reduction in effectiveness is used only to determine whether the licensee has the authority to implement the change without prior NRC approval under § 50.54(q)(3) or must submit for prior NRC approval under § 50.54(q)(4). The NRC's approval of the proposed change establishes a new standard of effectiveness for the licensee's emergency plan. Accordingly, the NRC does not believe the final rule to be internally inconsistent.

Section 50.54(q)(3) in the final rule grants authority to the holder of a license to make changes to its emergency plan without prior NRC approval only if an analysis demonstrates that the changes do not reduce the effectiveness of the plan and the plan, as changed, continues to meet the requirements in Appendix E, and for nuclear power reactor licensees, § 50.47(b). As such, § 50.54(q)(3) provides for a two factor test to establish whether the licensee has the authority to make a change without prior NRC approval. First, the plan as modified must continue to comply with the requirements of Appendix E, and for power reactors, the planning standards of § 50.47(b). Second, the licensee must establish that the change does not reduce the effectiveness of the

emergency plan. These are two different and independent prerequisites. Compliance with the requirements of Appendix E, and for power reactors, the planning standards of § 50.47(b), addresses the first factor. The second factor addresses whether or not the change reduces the effectiveness of the emergency pan. A change that satisfies the first factor may not satisfy the second factor and vice versa. Changes that do not satisfy the first factor would require the licensee to request an exemption from the affected requirements under § 50.12. Changes that do not satisfy the second factor would require the licensee to request prior approval under § 50.54(q)(4).

The NRC expects a licensee considering a change under this section to perform an evaluation of the change to a level of rigor and thoroughness consistent with the scope of the proposed change. A licensee's analysis of the impact of a change on the effectiveness of the plan needs to consider the accidents included in the emergency planning basis, the licensing basis of the particular emergency plan, and any emergency plan elements implemented to address site-specific emergency response constraints (*e.g.,* delay in staff augmentation associated with a remote site, commitments to State or local governments, existence of significant external hazards, etc.).

Section 50.54(q)(4) in the final rule defines the process by which a licensee requests prior approval of a change to the emergency plan that the licensee has determined constitutes a reduction in effectiveness of the plan. The final rule retains the proposed requirement that a licensee pursuing these changes must apply for an amendment to its license as provided in § 50.90. A proposed emergency plan change that would reduce the effectiveness of the plan would expand the licensee's operating authority, and courts have found that Commission actions that expand licensees' authority under their licenses without formally amending the licenses constitute license amendments and should be processed through the Commission's license amendment procedures. (*See Citizens Awareness Network, Inc.* v. *NRC,* 59 F.3d 284 (1st Cir. 1995); *Sholly* v. *NRC,* 651 F.2d 780 (DC Cir. 1980) (*per curiam*), *vacated on other grounds,* 459 U.S. 1194 (1983); and *in re Three Mile Island Alert,* 771 F.2d 720, 729 (3rd Cir. 1985), *cert. denied,* 475 U.S. 1082 (1986). *See also Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI–96–13, 44 NRC 315 (1996)). Therefore, a change to a licensee's emergency plan that would expand the licensee's operating authority should also be processed through the Commission's license amendment procedures.

In response to § 50.54(q)(4) in the proposed rule, the NRC received several comments questioning the NRC's conclusion that proposed changes that would reduce the effectiveness of the licensee's emergency plan would expand the licensee's operating authority. The NRC maintains that a reduction in the effectiveness of a licensee's emergency plan constitutes an expansion of the licensee's operating authority. A licensee's emergency plan is part of the licensing basis for its nuclear power plant. The plan describes how the licensee will comply with the NRC's requirements governing EP and emergency response. The NRC's regulations require that the licensee have and implement an approved emergency plan as a condition of its operating license. A change to the emergency plan constituting a reduction in effectiveness of that plan allows the licensee to disclaim responsibility for performing activities and actions (or specific portions thereof) formerly required (or prohibited) under the superseded provisions of the licensee's approved emergency plan. It allows the licensee to perform, without fear of NRC regulatory response (*e.g.,* an order, including an enforcement action), activities and actions formerly precluded. In this situation, the licensee would have the capability to operate its facility in a manner that was not previously authorized by the NRC. In other words, the licensee would have operating authority beyond what it originally had, as reflected in the approved emergency plan without the proposed change.

The NRC notes that it is not simply that the emergency plan has ''changed'' that leads to the conclusion that there is an expansion of operating authority. Otherwise, any change to the emergency plan, regardless of the effect on licensee authority to operate, would be deemed an expansion of operating authority for which NRC approval via a license amendment is required. Rather, the effect of the plan change (*i.e.,* allowing the licensee to operate in a manner with respect to radiological health and safety that it was not allowed to do under the superseded provision of the emergency plan) forms the essence of the test of ''expanded'' operating authority.[2] Thus, an emergency plan change that would reduce the effectiveness of the plan would expand the licensee's operating authority under its license.

Moreover, the Commission has determined that the NRC must approve reductions in effectiveness to ensure compliance with the requirements of Appendix E, and for nuclear power reactors, the planning standards of § 50.47(b) so that the proposed changes provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. This approval is more than a ministerial, non-discretionary act. The determination of the acceptability of the proposed reduction in effectiveness necessitates consideration and resolution of technical and regulatory issues. In some instances, the evaluation of the plan change may involve the balancing of competing regulatory objectives and policies. Thus, NRC approval of a reduction in effectiveness constitutes an exercise of agency discretion. For these reasons, under the NRC's legal precedents, NRC approval of an emergency plan change that would reduce the effectiveness of the plan would grant the licensee greater operating authority and would require a license amendment request.

Under § 50.54(q)(4), in addition to satisfying the filing requirements for a license amendment request in §§ 50.90 and 50.91, the license amendment request must include all emergency plan pages affected by the change, a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the licensee's emergency plan, as revised, will continue to meet the requirements of Appendix E, and for nuclear power reactor licensees, the planning standards of § 50.47(b). The NRC will review the amendment application to make its no significant hazards consideration determination and to determine if the proposed change to the emergency plan is a reduction in effectiveness under § 50.54(q). If the proposed change does constitute a reduction in effectiveness, the NRC may issue the amendment only if it determines that the emergency plan, as modified, continues to meet the requirements in Appendix E, and for nuclear power reactors, the planning standards of § 50.47(b), and that there continues to be reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

[2] Consistent with the former § 50.54(q), § 50.54(q) in the final rule requires that only those emergency plan changes that reduce the effectiveness of the plan need prior NRC approval. Those plan changes that increase the effectiveness of the plan may expand the licensee's operating authority but would not require prior NRC approval.

Section 50.54(q)(5) in the final rule applies to all licensees subject to § 50.54(q) and requires that licensees retain a record of all changes to the emergency plan made without prior NRC approval for a period of three years from the date of change. This section also requires the licensee to submit, as specified under § 50.4, a report of each such change, including a summary description of its evaluation, within 30 days of the change being put into effect. The NRC expects that the record of changes will fully describe each change made and will include documentation of the evaluation that determined the change was not a reduction in effectiveness. The NRC will use this record of changes during inspection oversight of the licensee's implementation of § 50.54(q)(2).

In the proposed rule, § 50.54(q)(5) would have required licensees to submit a report of a change to the emergency plan made without NRC approval, 30 days after the change was made. One commenter requested that the 30-day period start when the ''change is implemented'' rather than starting when the ''change is made.'' The NRC agrees that clarification is necessary, but has decided to use the phrase ''change is put into effect,'' because it provides a more specific point in time. The change is put into effect when the modified emergency plan is available for use in the emergency response facilities. At that point, the change can affect the licensee's response to an emergency condition, whether or not all typical implementation activities, such as distribution of the updated emergency plan and ERO training, have been completed.

Section 50.54(q)(6) in the final rule requires a licensee of a nuclear power reactor to retain the emergency plan and each change for which prior NRC approval was obtained under § 50.54(q)(4) as a record until the Commission terminates the license.

The NRC is removing paragraph (r) of § 50.54. Section 50.54(r) was published as a final rule on August 19, 1980 (45 FR 55402), to require then-existing licensees authorized to possess and/or operate a research or test reactor facility to submit emergency plans complying with Appendix E to Part 50 to the NRC for approval within one year or two years, as applicable, from the effective date of the rule (November 3, 1980). (A discussion of this issue is also provided in Section II.B.6 of this document.)

The NRC is removing paragraph (s)(1) of § 50.54 to remove language addressing a one-time requirement that has now been completed. Section 50.54(s)(1) was published as a final rule on August 19, 1980 (45 FR 55402). This provision required existing nuclear power reactor licensees to submit to the NRC within 60 days after the effective date of the rule (November 3, 1980), the radiological response plans of State and local governmental entities in the U.S. that are wholly or partially within a plume exposure pathway EPZ, as well as the plans of State governments wholly or partially within an ingestion pathway EPZ. (A discussion of this issue is also provided in Section II.B.6 of this document.)

The NRC is removing paragraph (s)(2)(i) from § 50.54. Section 50.54(s)(2) was initially published as a final rule on August 19, 1980 (45 FR 55402), as a single paragraph. The rule was amended on May 29, 1981 (46 FR 28838), resulting in § 50.54(s)(2) being split into two paragraphs, §§ 50.54(s)(2)(i) and 50.54(s)(2)(ii). The rule language in § 50.54(s)(2)(i) required that the licensee, State, and local emergency plans for all operating power reactors be implemented by April 1, 1981, except as provided in Section IV.D.3. of Appendix E to Part 50. (A discussion of this issue is also provided in Section II.B.6 of this document.)

The NRC is removing paragraph (u) from § 50.54. Section 50.54(u) was published as a final rule on August 19, 1980 (45 FR 55402), to require then existing nuclear power reactor licensees to submit to the NRC plans for coping with emergencies that meet the standards in § 50.47(b) and the requirements of Appendix E to Part 50 within 60 days after the effective date of the rule (November 3, 1980). (A discussion of this issue is also provided in Section II.B.6 of this document.)

The NRC is revising paragraphs (gg)(1) and (gg)(2) of § 50.54 to replace ''DHS'' with ''FEMA.'' Although FEMA remains within DHS, the responsibility for offsite EP for nuclear power plants is with FEMA. The FEMA requested that ''FEMA'' be used rather than ''DHS'' for clarity of communication with stakeholders.

The NRC is amending § 50.54(gg)(1)(i) to remove the reference to the EOF as a ''near-site'' facility. The final rule provides criteria in Part 50, Appendix E, Section IV.E.8, regarding EOF distance from a nuclear power reactor site and for a performance based approach for EOFs, specifying that these facilities must meet certain functional requirements rather than requiring that they be located within a certain distance of the plant. The intent of this change is discussed in the section on changes to Appendix E, Section IV.E.8. (A discussion of this issue is also provided in Section II.B.3 of this document.)

3. Appendix E to Part 50, Emergency Planning and Preparedness for Production and Utilization Facilities

The NRC is amending Part 50, Appendix E, Section I, ''Introduction,'' to include a provision allowing an applicant for an early site permit under Part 52 that chooses to propose either major features of an, or a complete and integrated, emergency plan (§ 52.17(b)(2)), or a combined license under Part 52 (§ 52.79(a)(21)) whose application is docketed before December 23, 2011 to choose to defer compliance with this rule.

If the applicant chooses to defer compliance with this rule, and its early site permit or combined license is subsequently issued, then the permit holder or licensee shall request to amend its early site permit or combined license to demonstrate compliance with this rule no later than December 31, 2013. Furthermore, an applicant that defers compliance with this rule is expected to implement this rule under the same schedule as it would implement EP requirements in the absence of this rule. This means that this rule does not require any immediate implementation actions on the part of any applicant, but rather shall be implemented after receipt of a combined license, and under the licensee's schedule for completing EP-related requirements (*e.g.,* through completion of EP-related Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)).

The NRC intends, by allowing an applicant to defer compliance with this rule, to avoid unnecessary delays in making a licensing decision on an early site permit or a combined license already under consideration by the NRC, provided:

(1) The application complies with all applicable, current (prior to this rulemaking) EP regulations;

(2) The applicant, if it becomes an early site permit holder or a combined licensee, requests to amend its early site permit or combined license before December 31, 2013, to comply with the amended EP regulations in this rule; and

(3) The applicant, if it becomes an early site permit holder or a combined licensee, may not operate the facility until the NRC has approved the license amendment demonstrating compliance with this rule.

In response to a request in the proposed rule for comments on the potential impacts of a final rule on combined license and early site permit application processes and schedules, the NRC received comments that the

NRC should not require pending combined license and early site permit applicants to implement the final rule changes until after the NRC issues the license or permit. In this final rule, the NRC is offering applicants the option to defer *compliance* with the final rule. That period of compliance deferral, between December 23, 2011 and December 31, 2013, was selected specifically to apply only to those applications that have already been docketed and are nearing completion of the safety review and subsequent hearings (as applicable) prior to a licensing decision being made on the application. The NRC decided to limit the duration of that deferral as stated because future applicants and currently docketed applicants not nearing a licensing decision would have ample time to bring their applications into compliance with this final rule without the need to defer compliance. So that all combined license and early site permit applicants ultimately comply with the same regulations, an applicant whose application is docketed before December 23, 2011 that does not receive a combined license or early site permit before December 31, 2013, shall revise its combined license or early site permit application to comply with the changes in this final rule no later than December 31, 2013.

The NRC has added a new requirement in Part 50, Appendix E, Section I, to address the Tennessee Valley Authority (TVA) facility at Watts Bar. The TVA is in possession of a current construction permit for Watts Bar Nuclear Plant, Unit 2, and is treated as a current licensee for purposes of satisfying the requirements of this rule. These requirements reflect NRC support of a licensing review approach for Watts Bar Nuclear Plant, Unit 2, that employs the current licensing basis for Unit 1 as the reference basis for review and licensing of Unit 2, as stated in the SRM to SECY–07–0009, ''Possible Reactivation of Construction and Licensing Activities for the Watts Bar Nuclear Plant Unit 2,'' dated July 25, 2007.

To improve clarity in the organization of the regulations, the final rule numbers the paragraphs of Section I.

The NRC is amending paragraph H in Section II of Appendix E to remove a reference to the EOF as a ''near-site'' facility. Criteria are provided in Section IV.E.8, of Appendix E, regarding EOF distance from a nuclear power reactor site and for a performance based approach for EOFs. The criteria specify that these facilities need to meet certain functional requirements rather than requiring that they be located within a certain distance of the plant. The intent of this change is discussed in the changes to Section IV.E.8, of Appendix E. (A discussion of this issue is also provided in Section II.B.3 of this document.)

The NRC is amending several paragraphs within Section IV of Appendix E to Part 50 that apply to licensees and applicants for licenses under Part 50 or Part 52 of this chapter, as applicable. All provisions of Section IV of Appendix E to Part 50 apply to applicants for, and holders of, nuclear power reactor operating licenses under Part 50, combined licenses under Part 52, and certain early site permits under Part 52. Many of the provisions in Section IV also apply to Part 50 non-power reactor licensees. Therefore, for purposes of brevity, the initial reference to a ''licensee'' in each of the remaining paragraphs in this section indicates that that particular rule change applies to applicants for, and holders of, operating licenses under Part 50 for nuclear power reactors and non-power reactors, combined licenses under Part 52, and certain early site permits under Part 52, unless specifically stated otherwise. The initial reference to ''nuclear power reactor licensee'' in each of the remaining paragraphs in this section means applicants for, and holders of, operating licenses for nuclear power reactors under Part 50, combined licenses under Part 52, and certain early site permits under Part 52, unless specifically stated otherwise.

The NRC is amending the former first paragraph of Section IV by adding language to require nuclear power reactor licensees, but not applicants, to revise their ETEs when the U.S. Census Bureau decennial census data is available. The final rule requires that within 365 days of the later of the date of the availability of the most recent decennial census data or the effective date of this final rule, and within 365 days of the availability of subsequent decennial census data, these licensees must revise their ETE analyses using the decennial census data, and submit the analyses to the NRC under § 50.4.

The NRC will review the ETE analyses for completeness using NUREG/CR–7002, ''Criteria for Development of Evacuation Time Estimate Studies,'' the NRC guidance on ETE development issued with the final rule. The NRC received comments regarding the timeliness of submitting ETE updates for NRC review and extended the time period for ETE update submission from 180 to 365 days after a population change triggering the update or the release of census data. The NRC will not approve ETE updates but will review them for completeness. For this reason the NRC is requiring licensees to submit their ETE updates at least 180 days before they use them to form protective action recommendations and provide them to offsite authorities for use in developing offsite protective action strategies. This will allow time for NRC review after which licensees may assume that the updates are adequate and available for use.

The NUREG/CR–7002 guidance is an acceptable template to meet the requirements for ETE analysis development and nuclear power reactor licensees should use this guidance, or an appropriate alternative, when developing an ETE analysis or analysis update. The first set of 2010 census data is expected to be available in 2011. The NRC will establish a schedule for review of the updated ETEs. After the licensee submits the ETE analysis for NRC review, these ETEs will be known as the licensee's ''updated'' ETEs, as opposed to the ''approved'' ETEs, which are the ETEs approved by the NRC when it issues a license.

Thereafter, these licensees are required to annually review changes in the population of their EPZs. To complete these reviews, licensees will use data from the U.S. Census Bureau, which annually produces resident population estimates and State/local government population data, if available. These reviews must be conducted no more than 365 days apart. The licensee is required to update the ETE analysis to reflect the impact of a population change that causes the longest ETE value for the 2-mile zone or 5-mile zone, including all affected Emergency Response Planning Areas (ERPAs), or for the entire 10-mile EPZ to change by 25 percent or 30 minutes, whichever is less from the licensee's currently NRC-approved or updated ETE. An ERPA is defined as a local area within the EPZ for which emergency response information is provided; the EPZ is typically divided into ERPAs along geographic or political boundaries. The licensee is required to submit the updated ETE analysis to the NRC under the procedures of § 50.4 within 365 days of the availability of the population data used in the update and at least 180 days before using it to form protective action recommendations and providing it to State and local governmental authorities for use in developing offsite protective action strategies.

In the proposed rule, the NRC would have required an ETE analysis update when the population in the EPZ or most populous ERPA increased or decreased by more than 10 percent from the

population that formed the basis for the licensee's currently approved ETE. Several commenters disagreed with the 10 percent population change criterion being the triggering event that would require licensees to update their ETEs. Suggested alternative thresholds included various population sensitivity studies that would assess the effects of population changes on ETE values; a 25 percent change in the ETE baseline rather than a 10 percent change in the EPZ population; and population changes resulting in a change to ETE values of 25 percent or 30 minutes, whichever is less.

The final rule adopts the approach of a 25 percent or 30 minute increase in ETE values to determine when an ETE analysis update is warranted. The NRC determined that basing ETE analysis updates on a population change alone without consideration of its impact on the ETE values may not have resulted in useful ETE updates. This is because a large population change in an area where there is an established infrastructure may have no impact on ETE values, whereas a small population change in an area with limited infrastructure may impact the ETE values. The proposed requirement to update an ETE analysis based on a standard value of a 10 percent population change would have required licensees to submit updated ETEs that may have had the same time estimates as the original document and, therefore, would provide no useful updated ETE information to response agencies. An approach that considers both population change and its impact on the ETE numerical values provides assurance that updated ETE analyses are submitted only when the ETE values are impacted. This links the update to a population change that has an impact on the ETE values on a site-specific basis rather than a generic 10 percent population change that may or may not impact these values.

Therefore, nuclear power reactor licensees (but not applicants) will be required to provide an updated ETE analysis to the NRC within 365 days of (1) The later of the date of the availability of the most recent decennial census data or the effective date of this final rule, (2) the availability of subsequent decennial census data, and (3) the availability of the population data used in the update, during the years between decennial censuses, when a population increase within the EPZ causes certain ETE values to increase by 25 percent or 30 minutes, whichever is less from the licensee's currently NRC-approved or updated ETE. Licensees should perform a population sensitivity study for various population increases (*i.e.,* 10 percent, 20 percent, and 30 percent increases) to determine the population value that will cause ETE values to increase by 25 percent or 30 minutes, whichever is less. If this threshold is reached during the decennial period between censuses, the licensee must update the ETE analysis to reflect the impact of the population increase. To establish the basis for these update criteria, the NRC considered the input of ETE subject matter experts who considered the sensitivity of ETE analysis tools, uncertainty of the data used in the development of ETEs, and discussions with OROs regarding the time necessary to mobilize resources to support an evacuation. The NRC determined that an ETE increase of 30 minutes is the smallest time value that OROs would consider to potentially impact a protective action decision from shelter-in-place to evacuate or vice versa. A review of more than 30 current ETEs shows that most ETEs are longer than 4 hours. Therefore, the 30-minute increase would likely be the overriding criterion, although the 25-percent increase would be expected to apply primarily to sites with shorter ETEs. Either of these criteria would constitute a material change in ETE times and would provide an appropriate assessment of the effect of population change on the ETE on a site-specific basis.

In the proposed rule, the NRC would have required the licensee to submit an ETE update within 180 days of a population change triggering the update or the release of census data. The NRC received several stakeholder comments in opposition to the proposed 180-day requirement, some stating that the 180-day timeframe may be unrealistic. The NRC agrees that 180 days to complete ETE updates could be challenging based on the number of licensees and the limited number of commercial contractors available to complete the updates. Therefore, the NRC is extending the amount of time to complete ETE analysis updates from 180 to 365 days.

One commenter pointed out that ETEs only analyze the time required to evacuate areas within the EPZ. The commenter requested that the NRC clarify the sentence ''time required * * * for taking other protective actions'' because the only other protective action is to shelter in place and would not fall under the ETE. The NRC agrees with this comment and has removed the language ''and for taking other protective actions'' from the final rule language.

The requirement for nuclear power reactor licensees (but not applicants) to evaluate a population change impact on the ETE during the period between decennial censuses balances the burden on licensees by requiring an ETE analysis update only when a population change has a material impact on the individual ETE values. The U.S. Census Bureau currently projects population growth at approximately one percent per year in the U.S. However, certain areas experience much greater growth. The population of Maricopa County, Arizona, for example, experienced approximately 6.4 percent growth in the two year period from 2005 to 2007. The Palo Verde Nuclear Generating Station is located in Maricopa County. St. Lucie County in Florida, where the St. Lucie Nuclear Plant is located, experienced approximately 9.7 percent population growth in the same period. A nuclear plant's EPZ population may not grow at the same rate as the corresponding county(ies) population, but a review of population growth would be appropriate, as discussed in Section II.B.4 of this document.

The updated ETEs will allow for more effective development of public protective action strategies and review of evacuation planning. Sites with little population change will be minimally impacted by the requirement, while those sites with a greater rate of population change that materially impacts ETE values will be required to perform more frequent updates. Licensees should also identify potential enhancements to improve evacuation times and discuss them with OROs. (A discussion of this issue is also provided in Section II.B.4 of this document.)

The final rule also explains that a nuclear power reactor license applicant must use the most recent U.S. Census Bureau data, as of the date the applicant submits its application to the NRC, to conduct the ETE analysis for its application. Once an applicant obtains a combined license, it will need to conduct one review of any changes in the population of its EPZ at least 365 days before the licensee's scheduled fuel load. The licensee must use updated decennial census data if more recent decennial census data than that used in the licensee's application is available. If more recent decennial census data is not available, then the licensee must use annual resident population estimates from the U.S. Census Bureau and State and local government population data, if available. The licensee must update its ETE analysis if a population increase within the EPZ causes certain ETE values to increase by 25 percent or 30

minutes, whichever is less from the licensee's currently NRC-approved or updated ETE. If the 25-percent or 30-minute threshold is reached, the licensee must update the ETE analysis to reflect the impact of the population increase. The licensee must perform this review and submit the ETE update, to the extent necessary, no later than 365 days before the scheduled fuel load. After beginning operations, the licensee will need to comply with the final rule requirements, including the frequency of ETE reviews and updates, like any other operating licensee.

The NRC is revising the former first paragraph of Section IV to change the term ''radiation'' to ''radiological,'' to provide consistent use of the phrase ''radiological emergency.'' In the same paragraph, the phrase ''onsite protective actions during hostile action'' is being added as one of the elements for which emergency plans must contain information needed to demonstrate compliance. These elements correspond with the description of each part of Section IV; the requirement for onsite protective actions during hostile action is being added in new Section IV.I. The NRC is also clarifying that the requirements for the submittal of emergency response plans apply to not only applicants for nuclear power reactor operating licenses under Part 50, but also to applicants for early site permits (as applicable) and combined licenses under Part 52. This clarification was intended for, but inadvertently omitted from, a rulemaking to update Part 52 (72 FR 49517; August 28, 2007). To improve clarity in the organization of the rule, the final rule separates Section IV, as amended by the final rule, into seven paragraphs and numbers each of the paragraphs.

The final rule makes two editorial revisions to Appendix E to Part 50, Section IV.A.2. One change includes the abbreviation of emergency response organization, ''ERO,'' in paragraph 2 of Section IV.A. The second revision clarifies that paragraph 2.c. should read as follows: ''Authorities, responsibilities, and duties of an onsite emergency coordinator * * *.''

The NRC is amending Part 50, Appendix E, Section IV.A.7, to include hostile action at the site as one of the types of emergencies that define the State, local, and Federal agencies that nuclear power reactor licensees must identify in their emergency plan along with the assistance licensees expect from these agencies. The former regulations did not explicitly require the licensee to identify ORO resources for responding to the site during hostile action. Part 50, Appendix E, Section IV.A.7, in the final rule adds this requirement to ensure that the State, local, and Federal agencies needed during hostile action at the site are identified in the licensee's emergency plan. This requirement will be enforced through routine inspection and observation of emergency exercises. (A discussion of this issue is also provided in Section II.A.4 of this document.)

In the proposed rule, Part 50, Appendix E, Section IV.A.7, would have been modified to add the following: ''Nuclear power plant licensees shall ensure that offsite response organization resources (*e.g.,* local law enforcement, firefighting, medical assistance) are available to respond to an emergency including hostile action at the nuclear power plant site.'' The NRC received several comments asserting that the proposed rule language would give authority to the licensee over the OROs in order to ''ensure'' that resources would be available to respond to hostile action. The NRC agrees with the comments that determining the adequacy of ORO emergency plans is under the jurisdiction of FEMA and other State and local organizations, and the NRC did not intend to give licensees authority over OROs via this rulemaking. The NRC is revising the final rule by deleting the second sentence of Section IV.A.7, in the proposed rule, thereby clarifying the intent of the final rule.

The NRC is revising Section IV.A.7 by inserting the words ''a description of the'' immediately before ''assistance expected from, appropriate State, local, and Federal agencies'' to make this provision read consistently with the other paragraphs in Section IV.A.

Part 50, Appendix E, Section IV.A.7, also adds the definition of ''hostile action'' as an act directed toward a nuclear power plant or its personnel that includes the use of violent force to destroy equipment, take hostages, and/or intimidate the licensee to achieve an end. This includes attack by air, land, or water using guns, explosives, projectiles, vehicles, or other devices used to deliver destructive force. This definition is based on the definition of ''hostile action'' in BL–05–02. The NRC is excluding non-power reactors from the definition of ''hostile action'' at this time because a regulatory basis has not been developed to support the inclusion of non-power reactors in that definition. Further analysis and stakeholder interactions would be needed prior to including non-power reactors in the definition of ''hostile action.''

The NRC received a stakeholder comment via FEMA stating that a ''hostile action,'' as defined by the NRC, does not mention cyber attacks, which should be considered as a form of hostile action. Cyber attacks are addressed in licensees' cyber security plans consistent with § 73.54, ''Protection of digital computer and communication systems and networks,'' and associated guidance documents. The current cyber security program associates cyber attacks with ''digital computer and communication systems and networks,'' whereas the definition of hostile action is an act by individuals using physical violence that can potentially achieve an end to harm public health and safety. Even though cyber attacks can be malevolent actions against NRC licensees, its definition maintains an association with digital or analog computer and communications systems, whereas hostile actions imply physical attacks by individuals. Therefore, the definition of ''hostile action'' in Section IV.A.7 was not changed as a result of this comment.

The former Section IV.A.7 applied to non-power reactor licensees, and the NRC does not intend to change that requirement in this final rule. Non-power reactor licensees are still required to identify ORO resources that would respond to an emergency and the assistance licensees expect from these resources. However, because ''hostile action'' is defined as ''an act directed toward a nuclear power plant or its personnel,'' non-power reactor licensees are not required to identify the State, local, and Federal agencies needed during hostile action at the non-power reactor site.

The NRC is adding a new paragraph A.9 in Section IV of Appendix E to Part 50. This new paragraph will require nuclear power reactor licensees to perform a detailed analysis to show that on-shift personnel assigned emergency plan implementation functions are not assigned any responsibilities that would prevent them from performing their assigned emergency plan functions when needed. In the proposed rule, the NRC would have required licensees to ''provide'' a detailed analysis. However, the NRC did not intend for licensees to submit the detailed analysis for review or approval. Therefore, the wording in the final rule was changed to require licensees to have a detailed analysis in their emergency plans without providing it to the NRC.

The final rule does not specify, by position or function, which responsibilities must be assigned, but allows nuclear power reactor licensees the flexibility to determine the limit of assigned responsibilities for effective emergency plan implementation on a site-specific basis. This allows licensees

to take credit for new technologies that could potentially affect the number of on-shift staff that would be needed. However, licensees need to ensure that the duties assigned to on-shift staff are reasonable for one person to perform and are not so burdensome as to negatively impact emergency response. (A discussion of this issue is also provided in Section II.A.1 of this document.)

The final rule requires nuclear power reactor licensees to perform a detailed analysis, such as a job task analysis (JTA) or a time motion analysis, to demonstrate that on-shift personnel could implement the plan effectively without having competing responsibilities that could prevent them from performing their primary emergency plan tasks. The NRC expects the analysis to identify all the tasks that must be performed by available staff during an evolution such as response to an emergency. These licensees need to define the events that will be used in the detailed staffing analysis, such as postulated design basis accidents and the DBT, for which there must be emergency planning. The analysis must identify all tasks that must be completed for each analyzed event, and the responders responsible for the performance of those tasks. Licensees must then ensure that there is sufficient on-shift staff to perform all necessary tasks until augmentation staff arrives to provide assistance. Enhancing the regulations to require licensees to ensure that multiple responsibilities assigned to on-shift staff will not detract from adequate emergency plan implementation will establish a regulatory framework that more clearly codifies the NRC's shift staffing expectations for effective emergency response.

The NRC is amending Section IV.B of Appendix E to Part 50 to add a requirement that nuclear power reactor licensees must consider hostile action, which may adversely affect the plant (*e.g.,* cause personnel harm and/or equipment damage), in their EAL schemes. It will also serve to establish consistent EALs for hostile action among existing and future nuclear power reactor licensees and allow the licensees to make hostile action-related emergency declarations based on a credible threat. (A discussion of this issue is also provided in Section II.A.2 of this document.)

The former Section IV.B applied to non-power reactor licensees, and the NRC does not intend to change that requirement in this final rule. Non-power reactor licensees are still required to have EALs to initiate emergency response and protective actions. However, as discussed in Section II.A.2 of this document, the NRC is addressing through guidance the issue of hostile action EALs for non-power reactor licensees. In addition, the definition of ''hostile action'' does not include non-power reactors. Therefore, non-power reactor licensees are not required to consider hostile action in their EAL schemes at this time.

The final rule also makes changes to Appendix E to conform to changes to § 50.54(q), which address the issue described in Section II.B.5 of this document. The NRC is modifying the requirement in former paragraph (1) in Section IV.B of Appendix E to require each licensee to obtain prior NRC approval via § 50.90 if the licensee is changing its entire EAL scheme. This provision carries forward the intent of the former regulation to compel licensees to obtain NRC approval before changing EAL schemes, and sets forth the correct process to request that approval. The proposed rule would have required licensees to use § 50.4 to obtain prior NRC approval. For many of the same reasons provided earlier in Section IV of this document in the discussion of licensee use of the license amendment process to obtain prior NRC approval of changes to an emergency plan that would reduce the effectiveness of the plan under § 50.54(q), the license amendment process is the appropriate process for licensees to use to obtain prior NRC approval of EAL scheme changes.

The Commission explained in the Statement of Considerations for the 2005 final rule concerning NRC approval of licensee changes to EALs (70 FR 3591; January 26, 2005) the importance of prior NRC approval of a licensee's EAL scheme change:

> The Commission believes a licensee's proposal to convert from one EAL scheme (*e.g.,* NUREG–0654-based) to another EAL scheme (*e.g.,* NUMARC/NESP–007 or NEI–99–01 based) * * * is of sufficient significance to require prior NRC review and approval. NRC review and approval for such major changes in EAL methodology is necessary to ensure that there is reasonable assurance that the final EAL change will provide an acceptable level of safety.

As previously noted, courts have found that Commission actions that expand licensees' authority under their licenses without formally amending the licenses constitute license amendments and should be processed through the Commission's license amendment procedures. The Commission has determined that a licensee's EAL scheme change requires prior NRC approval ''to ensure that there is reasonable assurance that the final EAL change will provide an acceptable level of safety.'' These determinations require exercises of agency discretion. The staff must ensure that the licensee adopts each element of the generic EAL scheme to fit its site and facility. In addition, the licensee does not have the authority to change to a new scheme unless the NRC approves the change in advance. Under the legal precedents, NRC staff approval in these instances would grant the licensee authority beyond its current operating authority, and that approval requires a license amendment. This final rule clarifies that the process to request prior NRC approval of EAL scheme changes is the license amendment process.

The final rule provides additional flexibility by permitting licensees to use EAL schemes other than those listed in Section IV.B.2 of the proposed rule, provided that the licensee obtains prior NRC approval. The final rule corrects a misstatement in the proposed rule that the former rule required licensees to obtain prior NRC approval via § 50.4 for changes to an EAL scheme from NUREG–0654 to one based solely on NUMARC/NESP–007 or NEI 99–01. The final rule also removes the paragraph numbering in Section IV.B of the former rule. The former first paragraph of Section IV.B, as amended by this final rule, is designated as paragraph 1. As explained above, former paragraph (1) in Section IV.B has been replaced with the provision requiring licensees to obtain prior NRC approval, via a license amendment, for EAL scheme changes. The final rule deletes former paragraphs (2) and (3) of Section IV.B and replaces them with a new requirement that all EAL changes, other than EAL scheme changes, are required to be made under the amended § 50.54(q) change process, as discussed earlier in Section IV of this document. The final rule designates the provisions concerning EAL scheme changes and other EAL changes as paragraph 2. Paragraph B.2 applies to nuclear power reactor licensees and non-power reactor licensees.

The NRC is retaining the existing language of Section IV.C of Appendix E to Part 50, redesignating that language as paragraph C.1, and adding new paragraph C.2. Paragraph C.1 still applies to non-power reactor licensees, but paragraph C.2 does not, for the reasons provided in Section II.B.2 of this document. Paragraph C.2 requires that nuclear power reactor licensees, first, have and maintain the capability to assess, classify, and declare an emergency condition within 15 minutes after the availability of indications to plant operators that an emergency

action level has been exceeded and, second, promptly declare the emergency condition upon identification of the appropriate ECL. Any given emergency condition may result in the thresholds for two or more EALs being exceeded and licensees need to consider all applicable EALs and base the classification decision on that EAL resulting in the higher ECL.

In Part 50, Appendix E, Paragraph C.2 of the proposed rule, the NRC would have required that licensees and applicants had to promptly declare the emergency condition as soon as possible following a determination that an EAL has been exceeded. The NRC received a stakeholder comment that suggested that the proposed language could be interpreted as requiring declaration on the first identified EAL. Because such an interpretation was not the NRC's intent, the NRC reworded the proposed phrase ''following determination that an emergency action level has been exceeded,'' in the proposed rule to read ''following identification of the appropriate emergency classification level,'' in the final rule to clearly articulate the NRC's intent.

This new requirement emphasizes the NRC's expectations regarding the timeliness of emergency declarations while retaining sufficient operational flexibility to respond to extenuating circumstances necessary to protect public health and safety. The NRC considers the 15-minute criterion to commence when plant instrumentation, plant alarms, computer displays, or incoming verbal reports that correspond to an EAL become available to any plant operator. As used here, ''plant operator'' means any member of the plant staff, who by virtue of training and experience, is qualified to assess the indications or reports for validity and to compare the same to the EALs in the licensee's emergency classification scheme. ''Plant operators'' may be, but need not be, licensed operators or members of the ERO. ''Plant operators'' may be located in the control room or in another emergency facility in which emergency declarations are performed. The phrase ''plant operators'' does not encompass plant personnel such as chemists, radiation technicians, craft personnel, security personnel, and others whose positions require they report, rather than assess, abnormal conditions to the control room.

The 15-minute period encompasses all assessment, classification, and declaration actions associated with making an emergency declaration from the first availability of a plant indication or receipt of a report of an off-normal condition by plant operators up to and including the declaration of the emergency. Validation or confirmation of plant indications, or reports to the plant operators, is to be accomplished within the 15-minute period as part of the assessment. A small number of EAL thresholds are related to the results of analyses (*e.g.,* dose assessments, chemistry sampling) that are necessary to ascertain whether or not a numerical EAL threshold has been exceeded, rather than confirming or verifying an alarm or a received report. In these limited cases, the 15-minute declaration period starts with the availability of analysis results that show the threshold to be exceeded; this is the time that the information is available. Nonetheless, the NRC expects licensees to establish the capability to initiate and complete these analyses with a reasonable sense of urgency.

This 15-minute criterion ends as soon as the nuclear power reactor licensee determines that an EAL has been exceeded and the licensee makes the emergency declaration. The final rule requires the licensee to promptly declare the emergency condition as soon as possible following the identification of the appropriate ECL. Because the NRC requires emergency declarations to be made promptly, the final rule states that the 15-minute criterion is not to be construed as a grace period in which a licensee may attempt to restore plant conditions to avoid declaring an EAL that has already been exceeded. If the EAL threshold specifies a duration (*e.g.,* ''fire lasting for greater than 10 minutes from detection''), the licensee is expected to assess and classify the event concurrently with the specified condition duration. The licensee is then required to promptly declare the emergency condition as soon as the specified duration has been exceeded because no further assessment is necessary to make the declaration. The licensee is encouraged, but not required, to declare the emergency condition once it has been determined that the condition cannot be corrected before the specified duration is exceeded.

The final rule establishes a capability criterion, rather than an inflexible performance criterion, to allow nuclear power reactor licensees some degree of flexibility in addressing extenuating circumstances that may arise during an actual emergency. For example, an emergency declaration may need to be delayed in the interest of performing plant operations that are urgently needed to protect public health and safety. These delays could be found acceptable if they did not deny State and local authorities the opportunity to implement actions to protect the public health or safety under their emergency plans and the cause of the delay was not reasonably within the licensee's ability to foresee and prevent.

In the proposed rule, the NRC would have established a 15-minute criterion for the declaration of an emergency condition. The NRC received several stakeholder comments that questioned the magnitude of the numeric criterion. Other comments suggested a less restrictive one-hour criterion for events classified as Notification of Unusual Events in light of the reduced consequences to the public of these events. In developing this rule, the NRC objective was to codify the 15-minute timeliness goal that had been the expected performance level after the publishing of the EPPOS–2 guidance and which had been incorporated into the ROP. The NRC believes that 15 minutes is an appropriate timeliness capability criterion based on the following rationale. The declaration of a General Emergency requires the nuclear power reactor licensee to provide a recommendation for public protective actions to State and local governments. These protective actions can be more effective in reducing the radiological consequences of the emergency on the public if the action is implemented in a timely manner, preferably before the onset of a major release of radioactive materials. The steps that need to be taken by offsite officials to consider the licensee's recommendation and to decide upon and implement an action cannot start until the licensee has classified and declared the emergency and provided the appropriate recommendation. As such, time is of the essence. The planning basis for emergency planning for nuclear power plants provided in NUREG–0654 addresses a spectrum of accidents. The NUREG–0654 planning basis provides that the onset of the release to the environment following the onset of the event may range from 0.5 hours to one day. Part 50, Appendix E, Section IV.D.3, as amended by the final rule, requires the licensee to have the capability to notify the State and local officials within 15 minutes after declaring an emergency and that the alert and notification system be capable of alerting the public and initiating notification of the public within about 15 minutes. The 15-minute timeliness expectation for emergency declarations now being codified is consistent with these current regulatory requirements and the EP planning basis.

Although the NRC recognizes that protective actions are not necessary at the lower ECLs and the lower ECL events have lesser potential

consequences on the public, the NRC believes that a single timeliness criterion for all four ECLs is necessary. The NRC notes that the ECL, be it a Notification of Unusual Event or a higher ECL, cannot be known until the classification is completed and the declaration is made. This argues against the use of different timeliness criteria for Notification of Unusual Events and higher ECLs because emergency events may not proceed step-wise through the four ECLs.

Further, the actions to assess, classify, and declare an emergency, and the resources needed to accomplish those actions (*e.g.,* ''capability''), do not differ by ECL. Although there are more EAL thresholds to consider during a Notification of Unusual Event than there are at the higher ECLs, this is balanced by increasing demands on the on-shift staff (*i.e.,* to perform assessments, corrective actions, and mitigative actions needed to address the degraded plant condition) associated with the higher ECLs. The conditions (such as insufficient staffing, procedures, and training) that reduce a nuclear power reactor licensee's capability for declaring a Notification of Unusual Event within 15 minutes have a similar effect on the licensee's capability for declaring higher ECLs. Also, the licensee's performance in declaring Notification of Unusual Events is a viable predictor of licensee performance at the less frequently declared higher ECLs. These performance deficiencies might not be identified and corrected if the NRC were to establish one hour for declaring Notification of Unusual Events and 15 minutes for the higher classification level emergencies. Therefore, the NRC has decided to retain the single timeliness criterion in the final rule for all ECLs.

The NRC is amending Section IV.D.1 of Appendix E to remove footnote 1. This footnote is unnecessary because the term ''EPZ'' is already addressed in Section I of Appendix E. This change will also make the numbering of footnotes sequentially consistent throughout Appendix E.

The NRC is amending Section IV.D.3 of Appendix E to require that the public alert and notification system required by this section additionally has backup methods for both the alert and notification functions without specifying which backup measures should be used. This approach allows flexibility in the selection of the method best suited for each nuclear power reactor site and also allows the use of newer technologies or other alternative methods. The availability of backup ANS methods enhances the public's ability to be promptly alerted of an event at a facility and of possible protective actions. (A discussion of this issue is also provided in Section II.B.1 of this document.)

Former Section IV.D.3 of Appendix E acknowledged that, for the events more likely to warrant use of the alert and notification capability, State and local officials will have substantial time available to make a judgment regarding activation of the warning system to alert and notify the public. Accordingly, the final rule will not impose specific time requirements for using a backup method. The alerting function may involve one or more methods that are already used as a backup means at several sites, such as multiple, independent siren activation points in conjunction with siren backup power, route alerting, reverse call-out systems or newer technologies, such as intelligent notification and communication systems for notifying targeted populations. The notification function may involve the designation of multiple EAS broadcast stations or use of weather alert radios or newer technologies, such as advanced messaging systems. The NRC and FEMA are providing guidance, issued contemporaneously with this final rule, for determining the acceptability of the backup methods based on the alerting and notification capabilities of the methods selected, administrative provisions for implementing and maintaining backup methods, identification of resources to implement backup methods, and periodic demonstration of the backup methods. Guidance is also being provided to nuclear power reactor licensees and offsite officials regarding the need to ensure that the backup methods can alert and notify the public in the entire plume exposure pathway EPZ, that the personnel and resources required to implement the backup methods will be available during any type of emergency (including hostile action), and that designated personnel know how to implement backup methods.

The backup method of alerting and notification must be capable of providing warning signals and instructional messages to the population in the entire plume exposure pathway EPZ when the primary ANS is unavailable during an emergency (*i.e.,* the primary ANS cannot alert or notify all or portions of the plume exposure pathway EPZ population). The backup means may be designed so that it can be implemented using a phased approach in which the populations most at risk are alerted and notified first, followed by alerting and notification of people in less immediately affected areas. The backup method may have the additional capability of being employed only in the specific areas impacted when a portion of the primary ANS, such as a single siren or sirens within a community, fails and the extent of the affected area and population can be determined.

The new requirement for a backup method applies to both the alerting function and notification function of the FEMA approved ANS. However, the NRC recognizes that some backup methods are not capable of meeting the timeframes that are part of the primary ANS design objectives. The intent of the final rule is not to have a duplicate primary ANS, but to have a means of backup alerting and notification in place so the public can be alerted in sufficient time to allow offsite officials to consider a range of protective actions for the public to take in the event of a severe accident with potential offsite radiological consequences. The NRC and FEMA are providing guidance to clarify the design objectives and other criteria for ANS backup methods.

For nuclear power plant sites with no backup measures currently in place, backup provisions must be identified, incorporated into the site's ANS design, and submitted for FEMA approval as specified in FEMA–REP–10. For nuclear power plant sites that already have provisions for ANS backup means in FEMA approved ANS designs, licensees and offsite officials will need to confirm that the backup methods meet the final rule requirements and submit revised ANS designs for FEMA approval if changes were deemed necessary. New Section IV.D.4 in Appendix E to Part 50 sets forth the deadlines for these implementation phases. Section V of this document provides further explanation of the deadlines.

Additional changes to Appendix E, Section IV.D.3 are being made to more clearly distinguish between the alerting and notification functions of the ANS (including clarification of how the 15-minute design objective applies to these functions), to use consistent terminology when referring to the officials responsible for ANS activation, and to update language regarding demonstration of ANS capabilities and correction of deficiencies. The final rule adds a reference to the alerting function in Section IV.D.3 to clearly indicate that the requirements for the primary and backup ANS apply to both the alerting and notification functions. The wording of the primary ANS design objective is revised to clarify that the 15-minute criterion applies to the completion of the initial alerting and start of the initial notification of the public. This

clarification was made because the NRC, consistent with the 1990 Seabrook decision (*Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB–935, 32 NRC 57, 68 (1990), has determined that notification of the public need not be completed within 15 minutes but that initiation of the notification process must begin within 15 minutes). The phrase ''appropriate governmental authorities'' replaces the phrase ''State and local officials'' when referring to ANS activation to encompass site-specific variations in the assignment of the responsibility for this function according to each offsite emergency plan and established ANS activation protocols. This responsibility may be assigned to a single State or local organization, or to multiple organizations among various State, county, local, and other governmental agencies. The use of ''appropriate governmental authorities'' addresses all of these variations. The former Section IV.D.3 referred to the February 1, 1982, date for then existing nuclear power reactor licensees to have demonstrated ANS capabilities for their sites. The NRC is removing the reference to the February 1, 1982, date and requiring that ANS capabilities to alert the public and provide instructions promptly must be demonstrated before exceeding 5 percent rated thermal power of the first reactor at each site, consistent with the requirements of § 50.47(d). It is also important that licensees promptly correct deficiencies found during initial ANS installation and testing, as well as deficiencies identified thereafter, as required by § 50.54(s)(2). However, the requirement for correction of ANS deficiencies is clearly stated in § 50.54(s)(2)(ii) and does not need to be repeated in Part 50, Appendix E, Section IV.D.3.

In the proposed rule, the NRC would have required licensees to identify and demonstrate that governmental authorities had the administrative and physical means for providing a backup method of public ANS. The NRC received several stakeholder comments that noted that governmental authorities are generally responsible for ANS activation and implementing any backup public ANS, and that the licensee has no control over the resources necessary to implement the backup capability. The NRC agrees that licensees generally secure the support of governmental authorities to maintain reasonable assurance that the offsite portions of the emergency plan can and will be implemented. In response to these comments, and to improve regulatory clarity and structure, the final rule modifies the proposed rule language for the backup capability to reflect this division of ANS responsibilities.

Note that no changes are being made to the basic requirement in § 50.47(b)(5) for nuclear power reactor licensees or applicants to ensure that the means to provide early notification and clear instruction (*i.e.,* alerting and notification) to the populace in the plume exposure pathway EPZ have been established. It is not necessary to address backup methods in § 50.47(b)(5) because the current provision establishes the overall requirement for alerting and notification.

Based on a comment received on the proposed rule, Part 50, Appendix E, Section IV.E.5 is revised to replace the reference to ''physicians'' with the term ''medical service providers'' because licensees typically make arrangements for medical services with medical service providers rather than individual physicians. The phrase ''and other medical personnel'' is deleted because it is now redundant to the reference to ''medical service providers.'' The NRC also revised Section IV.E.5 of Appendix E to change the term ''radiation'' to ''radiological'' to provide consistent use of the phrase ''radiological emergency.''

The final rule redesignates the former language of Appendix E, Section IV.E.8 as Section IV.E.8.a; and adds new Sections IV.E.8.b, IV.E.8.c, IV.E.8.d, and IV.E.8.e.

Section IV.E.8.a in the final rule removes the reference to the EOF as a ''near-site'' facility and adds the requirement that nuclear power reactor licensees must provide an OSC. In a conforming change, the final rule revises § 52.79(a)(17) to clarify that combined license applications are not subject to the TMI action requirements in § 50.34(f)(2)(xxv), which address the need for an onsite TSC, an onsite OSC, and an EOF. Instead, the requirements governing the need for such facilities in Part 50, Appendix E, Section IV.E.8.a(i) will apply to combined license applications. (A discussion of this issue is also provided in Section II.B.3 of this document.)

Section IV.E.8.b incorporates EOF distance criteria currently found in NRC guidance and specifies that an EOF must be located within 10 to 25 miles of each nuclear power reactor site that the facility serves or, if the EOF is located less than 10 miles from a nuclear power reactor site, then a backup facility must be provided within 10 to 25 miles of a site. The distance between the EOF and a site will be determined by the straight line distance from the site's TSC to the EOF, which is consistent with the approach described in NUREG–0696, Table 2, ''Relation of EOF Location to Habitability Criteria,'' dated February 1981. An EOF located more than 25 miles from the site must not adversely impact the ability of licensee and offsite responders to fulfill their responsibilities, and provisions for locating NRC and offsite responders closer to the nuclear power reactor site must be made so they can interact face-to-face with personnel going to and leaving the site for briefings and debriefings. During an event, NRC and offsite agency staff may wish to relocate from a remotely located EOF to another facility closer to the nuclear power plant site. Suitable space near the site must be available so NRC and offsite agency staff could coordinate their actions efficiently, communicate with responders in other onsite and offsite emergency response facilities, and interface directly with responders at the site as needed. This space will allow NRC site team and offsite response personnel, including Federal, State, and local responders, to conduct briefings and debriefings with emergency response personnel entering and leaving the site, communicate with responders at other emergency response facilities, maintain awareness of conditions at the site, and share information with other emergency response organizations via electronic means, such as computer links, the internet, or facsimile transmission.

The proposed rule language in Section IV.E.8.b of Appendix E would have obviated the need for licensees to obtain approval at either the NRC staff or Commission level to locate an EOF or consolidate EOFs more than 25 miles from a site if the EOF met certain performance based requirements and provided for NRC site team and offsite agency responders closer to the site. However, offsite agencies and the NRC's Advisory Committee on Reactor Safeguards (ACRS) expressed concerns about forgoing the requirement for a licensee to obtain NRC approval to locate an EOF beyond 25 miles. The NRC believes it is important for a licensee or an applicant to consult with offsite agencies that send representatives to the EOF prior to locating or consolidating such facilities. This consultation is particularly important when a licensee or applicant intends to use an EOF located more than 25 miles from a site to ensure that response times to the facility would be acceptable to offsite responders, adequate communications with offsite

responders at other locations would be available, and the EOF location would not raise any jurisdictional concerns (*e.g.,* when the EOF is located in a different State than a nuclear power plant). Therefore, the NRC is retaining the requirement for a licensee or applicant to obtain Commission approval to locate an EOF more than 25 miles from the nuclear power plant site(s) it serves and modified the rule language in Section IV.E.8.b accordingly.

A licensee will need prior Commission approval through a license amendment to locate an EOF beyond the 25-mile limit. Similar to approving EAL scheme changes and emergency plan changes that would reduce the effectiveness of the plan, determining whether a licensee's proposed EOF meets the regulatory criteria can require an exercise of agency discretion. Approval in these instances would grant the licensee authority beyond its current operating authority, and that approval requires a license amendment. Consistent with previous Commission approvals of EOFs beyond the 25-mile limit, these license amendments must be approved by the Commission and not the NRC staff.

Section IV.E.8.c in the final rule provides performance based criteria applicable to all EOFs. The functions that an EOF must address include the capability to obtain and display plant data and radiological information for each reactor unit or plant that the facility serves. In some cases, an EOF may serve units or plants involving more than one type of reactor technology, such as pressurized water reactors and boiling water reactors, or more than one design of the same reactor type. The EOF staff must be capable of understanding conditions for each type of reactor and translating technical information into a useful form for offsite officials and media relations staff. A co-located or consolidated facility must also be capable of supporting effective response to events at more than one site simultaneously, because widespread events affecting multiple sites can and have occurred, such as the electrical blackout in several areas of the northeastern U.S. and portions of Canada in August 2003. The ability to simultaneously display information for multiple plants will also enhance effective response to events occurring at more than one site.

Section IV.E.8.d in the final rule requires nuclear power reactor licensees to identify an alternative facility (or facilities) that would be accessible even if the site is under threat of or experiencing hostile action, to function as staging areas for augmentation of ERO staff during hostile action to minimize delays in emergency response and provide for a swift coordinated augmented response. To accomplish this, the alternative facility is required to have the following characteristics: the capability for communication with the EOF, control room, and plant security; the capability to notify offsite agencies; and the capability for engineering assessment activities, including damage control team planning and preparation. These capabilities will ensure that the ERO is aware of conditions at the site and is prepared to re-enter the site when it is deemed accessible. This will enable rapid staffing of onsite emergency response facilities and implementation of mitigation actions when ERO personnel enter the protected area. However, alternative facilities are not required to reproduce the full documentation present at primary emergency response facilities.

In the proposed rule, the NRC would have required nuclear power plant licensees and applicants under Part 50 and Part 52 to identify an alternative facility (or facilities) to function as staging areas for augmentation of ERO staff during hostile action. The NRC received several stakeholder comments that stated that the proposed rule was not consistent with the wording of Attachment 5 to BL–05–02. One commenter indicated that the use of the parenthetical phrase ''(or facilities)'' can be interpreted in two ways. If licensees use multiple locations to function as the alternative facility, then this phrase could mean that either all the locations will have the characteristics of the alternative facility or that these locations will collectively have those characteristics. To clarify this provision, the NRC changed the language of the final rule to explicitly state that the alternative facility (or facilities) must collectively have the necessary characteristics.

The same commenter also stated that the proposed rule would require the alternative facility to have the capability to perform offsite notifications whereas the wording of BL–05–02 states that one of the alternative facility characteristics is the capability to notify offsite response organizations if the EOF is not performing this action. The commenter argued that the final rule should have the same wording as contained in BL–05–02. The NRC disagrees with this comment. The intent of BL–05–02 was to provide a backup capability to perform offsite notifications if the other licensee emergency response facilities were not available due to a hostile action. In the event of a hostile action, there is no guarantee that the EOF would be available to perform this action. Therefore, the NRC has determined that the capability to perform offsite notifications is a necessary characteristic of alternative facilities. Licensees have the option to use the EOF as their alternative facility if it is located outside the owner-controlled area and is within about 30 miles of the site. If the EOF is not the designated alternative facility, then the alternative facility must also have the capability to perform offsite notifications, though not necessarily with the identical equipment utilized in other emergency response facilities.

The commenter also pointed out that the final rule should have the same wording as BL–05–02, which states that ''it is appropriate for alternative facilities to have general plant drawings, procedures, phones, and (ideally) computer links to the site.'' Another commenter recommended an increased implementation period for this part of the rule since licensee facilities do not meet the proposed requirements for the availability of computer links and would need to make facility changes under the site modification process. The NRC agrees in part with these comments. Bulletin BL–05–02 does direct licensees to equip alternative facilities as stated. However, the NRC has determined that, since the alternative facility (or facilities) must have the capability to communicate with the EOF, control room, and site security, to perform offsite notifications, and to conduct engineering assessment activities, including damage control team planning and preparation, licensees should have flexibility in meeting these requirements based on site-specific characteristics. Also, the NRC did not intend for licensees to perform major facility modifications or construct new facilities to meet the new requirement. The NRC intends for licensees to use existing facilities that are a safe distance from the plant. Therefore, the NRC will not codify the equipment that must be present in the alternative facility (or facilities) but rather will allow licensees to achieve the required capabilities of the alternative facility (or facilities) in the most appropriate manner for their site.

In the proposed rule, the NRC would have required the alternative facility (or facilities) to collectively exhibit certain characteristics, one of which was ''accessibility even if the site is under threat of a, or during an actual, hostile action.'' The ACRS Plant Operations and Fire Protection Subcommittee questioned whether the NRC intended for this provision to require that if

multiple facilities are utilized as the alternative facility, then each of the facilities must be accessible during hostile action or the threat thereof. Because the purpose of this provision is to require nuclear power reactor licensees to have an alternative facility (or facilities), each of which would be accessible under the threat of a, or during an actual, hostile action, the NRC changed the language of the final rule to clarify this characteristic of the alternative facility (or facilities). (A discussion of this issue is also provided in Section II.A.3 of this document.)

The NRC is also adding new Section IV.E.8.e to permit a nuclear power reactor licensee that, on the day the final rule becomes effective, has an existing approved EOF that does not meet the distance criteria for a primary or backup EOF, or does not have provisions for a facility closer to the site if the EOF is located more than 25 miles from a nuclear power reactor site, to not be subject to the requirements of Section IV.E.8.b. These licensees have already received approval from the Commission for variances from existing requirements (and guidance) regarding EOF locations, backup EOF facilities, or other EOF characteristics. The rule language was revised in the final rule to clarify that exceptions to the requirements of Section IV.E.8.b apply only to existing EOFs. If a licensee relocates its EOF or consolidates EOFs after the effective date of the final rule, then the requirements of this section will apply to the relocated or consolidated facility. (Also refer to the discussion of this issue in Section II.B.3 of this document.)

The NRC is amending Sections IV.E.9.c and IV.E.9.d to remove references to the EOF as a ''near-site'' facility. Criteria are provided in Section IV.E.8 of Appendix E, regarding EOF distance from a nuclear power reactor site and for a performance based approach for EOFs. The criteria specify that these facilities need to meet certain functional requirements rather than requiring that they be located within a certain distance of the plant. The intent of this change is discussed in the changes to Section IV.E.8 of Appendix E. (A discussion of this issue is also provided in Section II.B.3 of this document.)

The NRC is revising paragraph F.1.a of Section IV to remove the word ''radiation'' because the advent of hostile action scenarios renders usage of the word as too limiting in describing potential emergencies. This change provides consistent use of the term ''emergency plan.'' The NRC is also revising paragraph F.1.b to change the term ''radiation'' to ''radiological,'' to provide consistent use of the phrase ''radiological emergency.''

The final rule revises Section IV.F.2 to replace ''public notification system'' with ''public alert and notification system.'' In the proposed rule, Section IV.F.2 referred to the ANS as the ''public notification system'' and other sections of the rule referred to the ANS as the ''public alert and notification system.'' The NRC received a comment identifying this inconsistency. ''Public notification system'' has been changed in the final rule to the ''public alert and notification system'' for clarity and consistency with the usage elsewhere.

The NRC is adding a new requirement to Section IV.F.2.a to require nuclear power reactor licensees to submit, for NRC review and verification, scenarios for full participation exercises required by Appendix E, Section IV.F.2.a. This requirement enables the NRC to ensure that licensees implement in their exercise scenarios the new requirements of Sections IV.F.2.i and IV.F.2.j of Appendix E, including hostile action and a variety of challenges to reduce preconditioning of responders.

The NRC is revising paragraphs F.2.a.(ii) and F.2.a.(iii) of Appendix E, Section IV to replace ''DHS'' with ''FEMA.'' Although FEMA remains within DHS, the responsibility for offsite EP for nuclear power plants is with FEMA. The FEMA requested that ''FEMA'' be used rather than ''DHS'' for clarity of communication with stakeholders. In addition, in the first sentence of paragraph F.2.a.(iii), the NRC is changing the word ''licensee'' to ''license'' to correct a typographical error.

The NRC is revising Section IV.F.2.b to require nuclear power reactor licensees to submit scenarios for their onsite biennial exercises under 10 CFR 50.4. This requirement enables the NRC to verify that licensees implement in their exercise scenarios the requirements of Appendix E, Sections IV.F.2.i and IV.F.2.j, including hostile action and a variety of challenges to reduce preconditioning of responders. The NRC received comments regarding the timeliness of scenario reviews and has included language in the rule to specify that licensees must submit scenarios to the NRC at least 60 days before the start of the biennial exercise. The NRC will not approve scenarios, but will comment if concerns are noted. The NRC will provide any comments to the licensee no later than 30 days before the exercise begins. The NRC is also inserting the word ''subsequent'' in paragraph F.2.b of Section IV to distinguish between the requirements of paragraphs F.2.a and F.2.b. The NRC is also adding wording in paragraphs F.2.a and F.2.b to distinguish between the requirements of paragraphs F.2.a and F.2.b regarding the type of exercises for which scenarios are to be submitted. (A discussion of this issue is also provided in Section II.A.6 of this document.)

The former Section IV.F.2.b required that licensees ensure that adequate emergency response capabilities are maintained to address several principal emergency response functional areas. The NRC is expanding the list of principal functional areas of emergency response in paragraph F.2.b to include event classification, notification of offsite authorities, assessment of the impact of onsite and offsite radiological releases, and development of protective action recommendations. These additional functional areas are associated with the planning standards in § 50.47(b) that have a significant impact on determining the licensee's ability to implement adequate measures to protect public health and safety during a radiological emergency (*i.e.,* § 50.47(b)(4) regarding event classification, § 50.47(b)(5) regarding notification of offsite authorities, § 50.47(b)(9) regarding assessment of radiological releases, and § 50.47(b)(10) regarding protective actions).

Additionally, the NRC is clarifying the intent of the principal functional areas by replacing the term ''corrective actions'' with the term ''mitigative action implementation'' in Section IV.F.2.b. The term ''corrective actions'' is generally associated with a process (*e.g.,* the Corrective Action Program) to address identified plant problems. However, this process is not normally used during the active response to an emergency. ''Mitigative action implementation'' is a more accurate description of the principal functional area that is to be demonstrated in exercises and drills. This term is not the same as ''plant system repair,'' another principal functional area, because ''mitigative action implementation'' may involve equipment, procedures, and strategies developed under § 50.54(hh), the use of fire truck pumping capacity to inject water, or some ad hoc action. ''Mitigative action implementation'' communicates the expectation for a much more rapid response process than is communicated by ''corrective actions'' as that term is commonly used within the commercial nuclear power industry.

The NRC is amending the last sentence of Section IV.F.2.b to add ''in all participating facilities'' after ''operating staff'' to clarify that the operating staff from all facilities need not participate in the drill. The NRC is

also changing ''the drills could focus on onsite training objectives'' to ''the drills may focus on the onsite exercise training objectives'' to make the permissive intent of the regulatory language more explicit.

The NRC is amending the third sentence of Section IV.F.2.c by correcting grammar without changing the substance or intent of the provision. The word ''and'' is being removed from the end of Section IV.F.2.c.(1) and (2), and a semicolon replaces the period at the end of Section IV.F.2.c.(3), for the same reason. The NRC is also adding Section IV.F.2.c.(4) and (5) to clarify requirements for nuclear power reactor licensees at co-located sites to conduct hostile action exercises. The NRC received a comment regarding this issue and modified the proposed rule to direct that hostile action exercises be rotated between the licensees. This change flows logically from the new requirement to conduct hostile action exercises. Specific provisions for the conduct of exercises at co-located sites have been previously promulgated to clarify requirements for ORO participation (70 FR 3591). This action was appropriate because the same OROs support the emergency plans of both licensees at a co-located site. This final rule in Section IV.F.2.c.(5) requires that licensees at a co-located site rotate participation with OROs in hostile action exercises in a manner similar to other exercise participation to ensure that all licensees participate with OROs on a periodic basis. However, Section IV.F.2.c.(4) requires that licensees not participating with OROs conduct at least the onsite portion of hostile action exercises in each exercise cycle in order to ensure the maintenance of key skills.

The NRC is amending Section IV.F.2.d to reflect exercise cycle requirements for States with respect to ingestion pathway and hostile action exercises. The proposed rule included a case-by-case assessment for scheduling of hostile action exercises in States with multiple nuclear power reactors. However, in public meetings stakeholders commented that case-by-case assessments would create regulatory uncertainty. The final rule addresses exercises in States with multiple nuclear power reactor plume exposure pathway EPZs by providing that States should periodically participate in full or partial participation hostile action exercises and should rotate State participation among the licensees.

Part 50, Appendix E, Section IV.F.2.d of the former rule provided that States should fully participate in the ingestion pathway portion of exercises at least once every six years. As explained below regarding changes to Section IV.F.2.j, the NRC is requiring exercise cycles to be eight years long. A logical extension of establishing an eight-year exercise cycle is to eliminate the minimum frequency element in Section IV.F.2.d and state that States should fully participate in the ingestion pathway portion of exercises every cycle.

The NRC is amending Section IV.F.2.f to add a second situation when remedial exercises are required. The final rule explains that remedial exercises will be required if the emergency plan is not satisfactorily tested during the biennial exercise, such that the NRC, in consultation with FEMA, cannot find reasonable assurance that adequate protective measures can be taken in response to an emergency or determine that key ERO skills had been maintained. This change demonstrates the NRC's intent to invoke this requirement for exercises where the scope of the exercise is not sufficient to demonstrate the maintenance of key ERO skills. In the past, some exercises have not provided such a demonstration due to the use of simplistic scenarios. The final rule change is intended to prevent this trend in the future.

The key skills necessary to implement the emergency plan vary among ERO members, emergency response facilities, and licensees. In general, key skills include the ability to implement emergency response procedures specific to the duties of the ERO member. Key skills include specific response capabilities that may be assigned in a site-specific manner such as:

- Timely classification of events;
- Timely notification of offsite authorities;
- Assessment of radiological releases onsite and offsite;
- Development of protective action recommendations;
- Dissemination of information to the public via media channels;
- Engineering assessment, repair plan development, and repair of critical equipment under emergency conditions;
- Mitigative action implementation;
- Protection of workers during emergency response, including medical care;
- Response to operational transients while implementing the emergency plan; and
- Coordination with offsite response organizations.

In the proposed rule, the NRC provided a list of key skills licensees' emergency responders would have needed to implement emergency response procedures. The NRC received a comment that argued that the list of skills needs to be more specific. The NRC does not agree with this comment because the skills listed are more specific than previous requirements, are elaborated upon in guidance, and in some cases have been defined through the EP performance indicator program, as described in NEI 99–02, ''Regulatory Assessment Performance Indicator Guideline,'' Rev. 6, dated October 2009.

The NRC is also revising Section IV.F.2.g to require licensees to correct any weaknesses or deficiencies identified during exercises, drills, or training. This change explicitly states the regulatory intent that licensees must formally critique performance opportunities that develop, maintain, or demonstrate key skills in exercises, drills, and training, and correct any weaknesses or deficiencies identified in a critique. The term ''performance opportunity'' is used to indicate actual experiential events where proficiency in key skills is demonstrated. Classroom training may not provide an actual performance enhancing experience but rather offer instruction, while tabletop drills and operator requalification drills may offer actual performance opportunities.

The NRC is revising Section IV.F.2.h in the final rule to correct the reference to the section of Part 50 that pertains to situations in which State and local governments refuse to participate in emergency planning activities. The reference was changed to § 50.47(c)(1).

The NRC is adding new Section IV.F.2.i to Appendix E to require all nuclear power reactor licensees to include hostile action in biennial evaluated exercises. The final rule also ensures that scenarios will be sufficiently varied by requiring the use of a wide spectrum of radiological releases and events, to properly train responders to respond to events more realistic than those currently used in training, and to avoid preconditioning the responders to success with inappropriate anticipatory responses. Licensees are also required to emphasize coordination in their drills and exercises among onsite and offsite response organizations to strengthen the capabilities of the OROs to adequately respond to an emergency at the plant that requires offsite response. (A discussion of this issue is also provided in Section II.A.6 of this document.)

The NRC is adding new Section IV.F.2.j to Appendix E to require that nuclear power reactor licensees conduct exercises that provide ERO members the opportunity to demonstrate proficiency in the key skills necessary to implement the principal emergency response

functional areas identified in Section IV.F.2.b. Each exercise will also be required to provide ERO members the opportunity to demonstrate key skills specific to the emergency response duties in each emergency response facility. During each exercise cycle, licensees will be required to vary the content of exercise scenarios to provide ERO members the opportunity to demonstrate proficiency in the key skills necessary to respond to several specific scenario elements, including hostile action directed at the plant site; no radiological release or an unplanned minimal radiological release that does not require public protective actions; an initial classification of or rapid escalation to a Site Area Emergency or General Emergency; implementation of strategies, procedures, and guidance developed under § 50.54(hh)(2); and integration of offsite resources with onsite response. The final rule identifies the exercise cycle as eight calendar years, which must begin in the year of the licensee's first hostile action exercise. This amendment prescribes the minimum exercise scenario elements necessary for licensees to meet NRC expectations for challenging and varied scenario content in biennial exercises.

The NRC received comments regarding the proposed requirement that the first exercise in the new cycle must include hostile action. In States with multiple nuclear power reactor sites, this would require several such exercises in succession, increasing the burden on State emergency management agencies to support these exercises and perhaps reducing the benefit of preparedness efforts. The implementation period for this provision of the final rule was modified to allow current licensees until December 31, 2015, to conduct a hostile action exercise. The final rule clarifies the expectation that States should fully participate in a hostile action exercise by December 31, 2015, and that State full participation should be rotated among licensees in States with more than one nuclear power reactor plume exposure pathway EPZ.

The NRC believes that, in the current threat environment, nuclear power reactors may be a target for hostile action. Although such an attack is unlikely, EP is a defense-in-depth measure and NRC rules require preparedness for unlikely accidents and events. The final rule requires that hostile action response be integrated formally into the EP program through the inspection of biennial exercises performed early in the first exercise cycle and periodically thereafter.

The proposed rule would have identified the exercise cycle as six years. The proposed rule additionally would have specified a minimum frequency for hostile action scenarios. However, the NRC received numerous comments that the cycle should be changed to eight years and that a minimum frequency for hostile action scenarios should be eliminated to allow more flexibility in meeting the new requirements as well as preserving the variability of scenario challenges. Additionally, the commenters stated that the new requirements for scenario content coupled with the existing requirements would degrade the ability to vary scenario content. The NRC agrees with these comments and has changed the proposed rule to establish an eight-year exercise cycle without a minimum frequency for hostile action scenarios. This change enhances the ability of licensees to vary exercise scenario content in line with the numerous comments received on this issue.

Section IV.F.2.j in the final rule requires that nuclear power reactor licensees maintain a record of exercises that documents the contents of scenario elements used for each exercise during an exercise cycle to comply with the requirements of paragraph F.2.j. The documentation should include, but not be limited to, the following items for each scenario: sequence and timeline of events; extent of ERO participation and objectives to be demonstrated; opportunities for ERO demonstration of classification, notification, and development of protective action recommendations; expected radiological release conditions and demonstration of dose assessment, including dose projection results; and expected onsite/offsite radiological survey activities and results.

In the proposed rule, Section IV.F.2.j referenced § 50.54(hh) in the scenario elements for the exercise cycle. The NRC received one comment that suggested that the NRC delete the reference to § 50.54(hh) in Section IV.F.2.j and that hostile action drills be evaluated and incorporated into the NRC's triennial FOF drills. The NRC does not agree with this comment. The NRC added the use of mitigation equipment and procedures required by § 50.54(hh)(2) and response to hostile action in the final rule because they are important elements of nuclear plant defense-in-depth. Including the use of § 50.54(hh)(2) equipment in FOF drills would be inappropriate because the ERO, not security responders, would use the equipment. Additionally, the NRC has previously determined that combining EP and FOF drills would be extremely complicated due to differences in scope of the two evolutions and the introduction of safeguards information issues. Further, the exercises are easily separated and performance addressed individually because the response is essentially serial. The aftermath of a security response can be simulated effectively in EP exercises. This has been demonstrated during the hostile action drill pilot program.

The NRC received a comment that proposed Section IV.F.2.j could be interpreted as requiring an aircraft response in every hostile action exercise because proposed Section IV.F.2.j referenced § 50.54(hh). Section 50.54(hh)(1) requires certain actions to be taken in response to an aircraft threat. Section 50.54(hh)(2) requires the development of strategies, procedures, and guidance for response to loss of large areas of the plant due to fire or explosion. The NRC intended to require the demonstration of strategies, procedures, and guidance developed under § 50.54(hh)(2) as these elements could be used in response to many accident scenarios, as well as in the aftermath of hostile action, increasing the variability of scenarios. Implementation guidance accompanying this final rule recommends that licensees demonstrate their response to an aircraft threat under § 50.54(hh)(1) during an exercise cycle, but not necessarily during a biennial exercise. Section IV.F.2.j was clarified to require demonstration of § 50.54(hh)(2) capabilities in a biennial exercise during each exercise cycle.

The NRC is adding new Section IV.I to Appendix E that requires nuclear power reactor licensees to provide an expanded range of protective measures for onsite personnel that are appropriate for protection against hostile action. These measures will be site-specific and consider issues such as the location of workers in relation to potential targets, which will dictate if sheltering and/or evacuation are appropriate to adequately protect the workers. Also, these measures are prudent to protect personnel necessary to safely shut down the reactor and emergency responders who are necessary to implement the licensee's emergency plan. By specifying these measures for personnel designated to carry out site emergency actions, other onsite workers will also be protected because the onsite protective measures that were deemed appropriate to protect against hostile action would be provided via plant page announcements or at the direction of site security personnel to the site as a whole and would not be directed to any

particular group of workers. The new requirement does not direct any specific actions, but will allow licensees flexibility to determine the most effective protective measures for onsite personnel protection on a site-specific basis. It also will allow licensees to take advantage of new technologies or other innovations that can further enhance the protection of workers. (A discussion of this issue is also provided in Section II.A.5 of this document.)

## V. Implementation

This final rule becomes effective December 23, 2011. Licensees will be permitted to defer implementation of the final rule until June 20, 2012, except for the following rule changes:

(1) The new requirements under § 50.54(q) (amended emergency plan change process). Submittal of proposed emergency plan changes for prior NRC approval made after February 21, 2012 must conform with the new requirements under § 50.54(q)(4). Submittal of emergency plan change documentation made after February 21, 2012 must conform with the new requirements under § 50.54(q)(5). The implementation period for these requirements was revised from 30 days after publication of the final rule in the **Federal Register** in the proposed rule to 90 days after publication of the final rule in the **Federal Register** based on comments that 30 days after publication may not be sufficient time for licensees to update their site programs and procedures to address the amended emergency plan change process requirements. The NRC believes that a 90-day time frame after publication is reasonable for this activity, and the final rule reflects this adjustment to the implementation schedule;

(2) The new requirements under Part 50, Appendix E, Section IV.1–7 (evacuation time estimate updates), which each applicable licensee is required to implement within 365 days of the later of the date of availability of the most recent decennial census data from the U.S. Census Bureau or December 23, 2011;

(3) The new requirements under Part 50, Appendix E, Section IV.A.7 (licensee coordination with OROs), which each applicable licensee is required to implement no later than June 23, 2014. The implementation period for this requirement was revised from 180 days after publication of the final rule in the **Federal Register** in the proposed rule to 30 months after the effective date of the final rule based on comments that 180 days may not be sufficient time to obtain new or update existing arrangements involving offsite resources that support onsite and offsite response activities. The NRC believes that a 30-month time frame is more reasonable for this activity, and the final rule reflects this adjustment to the implementation schedule;

(4) The new requirements under Part 50, Appendix E, Section IV.A.9 (on-shift staffing analysis), which each applicable licensee must implement no later than December 24, 2012. The implementation period for this requirement was revised from 180 days after publication of the final rule in the **Federal Register** in the proposed rule to 365 days after the effective date of the final rule based on comments that 180 days may not be sufficient time to perform the on-shift staffing analysis. However, licensees are expected to take interim compensatory measures to address any staffing shortfalls identified in the staffing analysis within 30 days of when the results of the staffing analysis are available, and then implement long-term corrective actions within 24 months of performing the staffing analysis;

(5) The new requirements under Part 50, Appendix E, Section IV.D.3 (backup means for alert and notification systems). Where FEMA has approved a nuclear power reactor site ANS design report including the backup ANS capability, this rule provision must be implemented by December 24, 2012. Where the ANS design report does not include backup ANS means or is in need of revision to ensure adequate backup ANS capability, a revision of the ANS design report must be submitted to FEMA for review by June 24, 2013 and the FEMA-approved backup ANS means must be implemented within 365 days after FEMA approval. However, the total time period to implement a FEMA-approved backup ANS means shall not exceed June 22, 2015;

(6) The new requirements under Part 50, Appendix E, Section IV.E.8.d (emergency response organization augmentation at alternative facility), which each applicable licensee is required to implement no later than December 23, 2014, with the exception of the capability for staging emergency response organization personnel at an alternative facility (or facilities) and the capability for communications with the EOF, control room, and plant security, which must be implemented no later than June 20, 2012; and

(7) The new requirements under Part 50, Appendix E, Section IV.F.2 (challenging drills and exercises). Each applicable licensee is required to conduct a hostile action exercise for each of its sites no later than December 31, 2015. The first eight-year exercise cycle for a site will begin in the calendar year of the first hostile action exercise. For a site licensed under Part 52, the first eight-year exercise cycle begins in the calendar year of the initial exercise required by Section IV.F.2.a. All of the new requirements in Section IV.F.2 that must be completed in an exercise cycle must be implemented no later than the first eight-year exercise cycle for each site. The remaining new requirements in Section IV.F.2 are effective on December 23, 2011.

Certain applicants for an early site permit under Part 52, or a combined license under Part 52, can defer compliance with this final rule. Such an applicant can defer compliance if its application complies with all applicable, current (prior to this rulemaking) EP regulations, and the applicant, if it becomes an early site permit holder or a combined licensee, requests to amend its early site permit or combined license before December 31, 2013, to comply with the amended EP regulations in this final rule. The applicant, if it becomes a combined licensee, may not operate the facility until the NRC has approved the license amendment demonstrating compliance with this rule. If the applicant does not receive a combined license or early site permit before December 31, 2013, the applicant shall revise its combined license or early site permit application to comply with those changes no later than December 31, 2013.

In the proposed rule, the NRC also requested input on the implementation schedule for each element of the proposed rule for current licensees. The NRC received a number of comments on the appropriateness of the proposed implementation schedule, including whether arbitrary implementation deadlines were needed or if schedules should be site-specific to allow licensees to budget resources and properly coordinate EP program changes with OROs. The NRC believes that a single fixed implementation schedule is warranted to avoid wide variations among licensees in implementing the new requirements, to ensure that new requirements with long lead times, such as those involving biennial exercises, are addressed in a timely manner, and to avoid potential problems for offsite agencies that support multiple sites.

## VI. Guidance

The NRC revised existing guidance and provided new guidance for the new requirements in this final rule. This guidance is intended to provide an acceptable method of how licensees and applicants can meet the requirements of the final rule. The NRC will publish

**Federal Register** notices announcing the availability of the revised and new guidance documents. The documents will be available at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0122.

## VII. Criminal Penalties

Section 223 of the Atomic Energy Act of 1954, as amended (AEA), provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under Sections 161b, 161i, or 161o of the AEA. For the purposes of Section 223 of the AEA, the Commission is amending 10 CFR Parts 50 and 52 and Appendix E to Part 50 under Sections 161b, 161i, and 161o of the AEA.

## VIII. Agreement State Compatibility

Under the Policy Statement on Adequacy and Compatibility of Agreement States Programs, approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of this chapter. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with the particular State's administrative procedure laws. Category ''NRC'' regulations do not confer regulatory authority on the State.

## IX. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the methods provided in the **ADDRESSES** section of this document, as indicated.

| Document | PDR | Web | NRC library (ADAMS) |
|---|---|---|---|
| NRC Order EA–02–026, ''Order for Interim Safeguards and Security Compensatory Measures,'' issued February 25, 2002 | X | | ML020510635 |
| SRM–M041214B– ''Briefing on Emergency Preparedness Program Initiatives, 1 p.m., Tuesday, December 14, 2004, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance),'' dated December 20, 2004 | X | | ML043550354 |
| Bulletin 2005–02 (BL–05–02), ''Emergency Preparedness and Response Actions for Security-Based Events,'' dated July 18, 2005 | X | | ML051990027 |
| SECY–06–0200, ''Results of the Review of Emergency Preparedness Regulations and Guidance,'' dated September 20, 2006 | X | | ML061910707 |
| SRM to SECY–06–0200, ''Results of the Review of Emergency Preparedness Regulations and Guidance'' dated January 8, 2007 | X | | ML070080411 |
| Memorandum to the Commission, ''Rulemaking Plan for Enhancements to Emergency Preparedness Regulations and Guidance,'' dated April 17, 2007 | X | | ML070440148 |
| SRM–M060502, ''Staff Requirements—Briefing on Status of Emergency Planning Activities, (Two sessions) 9:30 a.m. and 1 p.m., Tuesday, May 2, 2006, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to public attendance)'' dated June 29, 2006 | X | | ML061810014 |
| ''Summary of March 5, 2008 Meeting to Discuss Emergency Preparedness Draft Preliminary Rule Language,'' dated April 3, 2008 | X | X | ML080940227 |
| Draft Preliminary Rule Language, Emergency Preparedness Rulemaking, February, 2008 | X | X | ML080370069 |
| ''Summary of July 8, 2008 Meeting to Discuss Comments on Emergency Preparedness Draft Preliminary Rule Language,'' dated August 6, 2008 | X | X | ML082180005 |
| Order EA–02–261, ''Access Authorization Order,'' issued January 7, 2003 (68 FR 1643; January 13, 2003) | X | | ML030060360 |
| Order EA–03–039, ''Security Personnel Training and Qualification Requirements (Training) Order,'' issued April 29, 2003 (68 FR 24514; May 7, 2003) | X | | ML030910625 |
| Order EA–03–086, ''Revised Design Basis Threat Order,'' issued April 29, 2003 (68 FR 24517; May 7, 2003) | X | | ML030740002 |
| **Federal Register** Notice—Final Rule to Amend 10 CFR 73.1: Design Basis Threat (72 FR 12705; March 19, 2007) | X | | ML070520692 |
| Information Notice (IN) 91–77, ''Shift Staffing at Nuclear Power Plants,'' dated November 26, 1991 | X | | Non-Publicly Available |
| IN 93–81, ''Implementation of Engineering Expertise On-Shift,'' dated October 12, 1993 | X | | ML031070314 |
| IN 95–48, ''Results of Shift Staffing Study,'' dated October 10, 1995 | X | | ML031060170 |
| NUREG–0654/FEMA–REP–1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' dated November 1980 | X | | ML040420012 |
| NUREG–0849, ''Standard Review Plan for the Review and Evaluation of Emergency Plans for Research and Test Reactors,'' dated October 1983 | X | | ML062190191 |
| NUMARC/NESP–007, Revision 2, ''Methodology for Development of Emergency Action Levels,'' dated January 1992 | X | | ML041120174 |
| NEI 99–01, Revision 5, ''Methodology for Development of Emergency Action Level,'' dated September 2007 | X | | ML073330643 |
| Regulatory Guide 2.6, ''Emergency Planning for Research and Test Reactors,'' dated March 1983 | X | | ML003740234 |
| Regulatory Issue Summary 2006–12, ''Endorsement of Nuclear Energy Institute Guidance 'Enhancements to Emergency Preparedness Programs for Hostile Action,' '' dated July 19, 2006 | X | | ML072670421 |
| Regulatory Issue Summary 2004–15, ''Emergency Preparedness Issues: Post-9/11,'' dated October 18, 2004 | X | | Non-Publicly Available |

| Document | PDR | Web | NRC library (ADAMS) |
|---|---|---|---|
| NEI 06–04, ''Conducting a Hostile Action-Based Emergency Response Drill,'' Rev. 1, dated October 30, 2007 | X | | ML073100460 |
| RIS 2008–08, ''Endorsement of Revision 1 to Nuclear Energy Institute Guidance Document NEI 06–04, 'Conducting a Hostile Action-Based Emergency Response Drill,'' dated March 19, 2008 | X | | ML080110116 |
| IN 2002–25, ''Challenges to Licensees' Ability to Provide Prompt Public Notification and Information During an Emergency Preparedness Event,'' dated August 26, 2002 | X | | ML022380474 |
| IN 2005–06, ''Failure to Maintain Alert and Notification System Tone Alert Radio Capability,'' dated March 30, 2005 | X | | ML050680335 |
| IN 2006–28, ''Siren System Failures Due to Erroneous Siren System Signal,'' dated December 22, 2006 | X | | ML062790341 |
| IN 1996–19, ''Failure of Tone Alert Radios to Activate When Receiving a Shortened Activation Signal,'' dated April 2, 1996 | X | | ML031060187 |
| Regulatory Guide (RG) 1.155, ''Station Blackout,'' issued August 1988 | X | | ML003740034 |
| FEMA–REP–10, ''Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants,'' dated November 1985 | | *www.fema.gov* | |
| IN 85–80, ''Timely Declaration of an Emergency Class, Implementation of an Emergency Plan, and Emergency Notifications,'' dated October 15, 1985 | X | | ML031180307 |
| Emergency Preparedness Position (EPPOS)–2, ''Emergency Preparedness Position (EPPOS) on Timeliness of Classification of Emergency Conditions,'' dated August 1, 1995 | X | | ML023040462 |
| NUREG/CR–6953 Vol. 1, ''Review of NUREG–0654 Supplement 3, Criteria for Protective Action Recommendations for Severe Accidents,'' dated December 2007 | X | | ML080360602 |
| NUREG/CR–6863, ''Development of Evacuation Time Estimates for Nuclear Power Plants,'' dated January 2005 | X | | ML050250240 |
| NUREG/CR–6864, ''Identification and Analysis of Factors Affecting Emergency Evacuations,'' dated January 2005 | X | | ML050250245 |
| NUREG/CR–7002, ''Criteria for Development of Evacuation Time Estimate Studies,'' dated November 2011 | X | | ML113010515 |
| EPPOS–4, ''Emergency Plan and Implementing Procedure Changes,'' dated November 19, 1998 | X | | ML023040483 |
| Withdrawal of Emergency Preparedness Position (EPPOS) 4, ''Emergency Plan and Implementing Procedure Changes,'' dated November 19, 1998 | X | | ML050800537 |
| RIS 2005–02, ''Clarifying the Process for Making Emergency Plan Changes,'' dated February 14, 2005 | X | | ML042580404 |
| ''Discussion of NREP 'Parking Lot' Items,'' dated August 11, 2005 | X | | ML052000263 |
| Transcripts for August 31, 2005 and September 1, 2005 Portion of the Emergency Preparedness Public Meeting | X | | ML052620366 |
| ''Summary and Analysis of Comments (Received Between August 31 and October 31, 2005),'' dated February 28, 2006 | X | | ML060450376 |
| ''Summary and Analysis of Site-Specific Comments (Received Between August 31 and October 31, 2005),'' dated March 31, 2006 | X | | ML060860401 |
| Transcript of Public Meeting for Follow Up Discussions of Selected Topics for the Review of Emergency Preparedness Regulations and Guidance for Commercial Nuclear Power Plants, held May 19, 2006 | | | ML061590186 |
| NUREG–0696, ''Functional Criteria for Emergency Response Facilities,'' dated February 1981 | X | | ML051390358 |
| SRM to SECY–04–0236, ''Southern Nuclear Operating Company's Proposal to Establish a Common Emergency Operating Facility at Its Corporate Headquarters,'' dated February 23, 2005 | X | | ML050550131 |
| NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' Supplement 1, ''Requirements for Emergency Response Capabilities,'' dated January 1983 | X | | ML051390367 |
| NEI 99–02, ''Regulatory Assessment Performance Indicator Guideline,'' Rev. 6, dated October 2009 | X | | ML092931123 |
| Comments submitted by Nuclear Energy Institute on EP draft preliminary rule language (Letter identifier for comments: NEI1–X) | X | X | ML081690809 |
| Comments submitted by Union of Concerned Scientists on EP draft preliminary rule language (Letter identifier for comments: NGO1–X) | X | X | ML081840067 |
| Comments submitted by PA Bureau of Radiation Protection on EP draft preliminary rule language (Letter identifier for comments: SPA1–X) | X | X | ML081690778 |
| EP final rule Regulatory Analysis and Backfit Analysis | X | X | ML112971541 |
| EP final rule Environmental Assessment | X | X | ML102150163 |
| EP Paperwork Burden Analysis | X | X | ML112971537 |
| NRC comment responses for EP draft preliminary rule language | X | X | ML091180198 |
| Summary and Analysis of Public Comments on Proposed Rule Language | X | X | ML112971546 |
| Summary of September 17, 2009, Meeting to Discuss the Proposed Rule on Enhancements to Emergency Preparedness Regulations and Related Guidance Documents (October 16, 2009) | X | X | ML092881256 |
| SRM to SECY–07–0009, ''Possible Reactivation of Construction and Licensing Activities for the Watts Bar Nuclear Plant Unit 2,'' dated July 25, 2007 | X | X | ML072060688 |
| SECY–09–0007, ''Proposed Rule Related to Enhancements to Emergency Preparedness Regulations (10 CFR part 50),'' dated January 9, 2009 | X | X | ML082890481 |
| SRM to SECY–09–0007, ''Proposed Rule Related to Enhancements to Emergency Preparedness Regulations (10 CFR part 50),'' dated April 16, 2009 | X | | ML091060206 |

| Document | PDR | Web | NRC library (ADAMS) |
|---|---|---|---|
| SRM–M091208, ''Staff Requirements—Briefing on the Proposed Rule: Enhancements to Emergency Preparedness Regulations, 9:30 a.m., Tuesday, December 8, 2009, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance),'' dated January 13, 2010 | X | | ML100130067 |
| Information from November 15, 2010 Public Meeting to Discuss the Proposed Implementation Dates of the Emergency Preparedness Final Rule | X | X | ML102770561 |

## X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is not aware of any voluntary consensus standard that could be used instead of the proposed Government-unique standards. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified.

## XI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The NRC requested public comments on any environmental justice considerations that may be related to this rule and no comments were received. The NRC also requested the views of the States on the environmental assessment for this rule and no comments were received.

## XII. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), Approval Number 3150–0011.

The burden to the public for these information collections is estimated to average 123 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.Resource@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

*Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## XIII. Regulatory Analysis: Availability

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Availability of the regulatory analysis is indicated in Section IX of this document.

## XIV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

## XV. Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed a backfit analysis for the final rule. The Commission finds that the backfits contained in the final rule, when considered in the aggregate, will constitute a substantial increase in EP and are justified in view of this increased protection of the public health and safety. Availability of the backfit analysis is indicated in Section IX of this document.

## XVI. Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the OMB.

## List of Subjects

*10 CFR Part 50*

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

*10 CFR Part 52*

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50 and part 52.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as

amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332).

Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.47, revise paragraphs (b)(3), (b)(10), and (d)(1) to read as follows:

**§ 50.47 Emergency plans.**

* * * * *

(b) * * *

(3) Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's Emergency Operations Facility have been made, and other organizations capable of augmenting the planned response have been identified.

* * * * *

(10) A range of protective actions has been developed for the plume exposure pathway EPZ for emergency workers and the public. In developing this range of actions, consideration has been given to evacuation, sheltering, and, as a supplement to these, the prophylactic use of potassium iodide (KI), as appropriate. Evacuation time estimates have been developed by applicants and licensees. Licensees shall update the evacuation time estimates on a periodic basis. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

* * * * *

(d) * * *

(1) Arrangements for requesting and effectively using offsite assistance on site have been made, arrangements to accommodate State and local staff at the licensee's Emergency Operations Facility have been made, and other organizations capable of augmenting the planned onsite response have been identified.

* * * * *

■ 3. In § 50.54:

■ a. Revise paragraph (q), the introductory text of paragraph (gg)(1), and paragraphs (gg)(1)(i) and (gg)(2); and

■ b. Remove and reserve paragraphs (r), (s)(1), (s)(2)(i), and (u).

The revisions read as follows:

**§ 50.54 Conditions of licenses.**

* * * * *

(q) *Emergency plans.*

(1) Definitions for the purpose of this section:

(i) *Change* means an action that results in modification or addition to, or removal from, the licensee's emergency plan. All such changes are subject to the provisions of this section except where the applicable regulations establish specific criteria for accomplishing a particular change.

(ii) *Emergency plan* means the document(s), prepared and maintained by the licensee, that identify and describe the licensee's methods for maintaining emergency preparedness and responding to emergencies. An emergency plan includes the plan as originally approved by the NRC and all subsequent changes made by the licensee with, and without, prior NRC review and approval under paragraph (q) of this section.

(iii) *Emergency planning function* means a capability or resource necessary to prepare for and respond to a radiological emergency, as set forth in the elements of section IV. of appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b).

(iv) *Reduction in effectiveness* means a change in an emergency plan that results in reducing the licensee's capability to perform an emergency planning function in the event of a radiological emergency.

(2) A holder of a license under this part, or a combined license under part 52 of this chapter after the Commission makes the finding under § 52.103(g) of this chapter, shall follow and maintain the effectiveness of an emergency plan that meets the requirements in appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b).

(3) The licensee may make changes to its emergency plan without NRC approval only if the licensee performs and retains an analysis demonstrating that the changes do not reduce the effectiveness of the plan and the plan, as changed, continues to meet the requirements in appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b).

(4) The changes to a licensee's emergency plan that reduce the effectiveness of the plan as defined in paragraph (q)(1)(iv) of this section may not be implemented without prior approval by the NRC. A licensee desiring to make such a change after February 21, 2012 shall submit an application for an amendment to its license. In addition to the filing requirements of §§ 50.90 and 50.91, the request must include all emergency plan pages affected by that change and must be accompanied by a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the licensee's emergency plan, as revised, will continue to meet the requirements in appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b).

(5) The licensee shall retain a record of each change to the emergency plan made without prior NRC approval for a period of three years from the date of the change and shall submit, as specified in § 50.4, a report of each such change made after February 21, 2012, including a summary of its analysis, within 30 days after the change is put in effect.

(6) The nuclear power reactor licensee shall retain the emergency plan and each change for which prior NRC approval was obtained pursuant to paragraph (q)(4) of this section as a record until the Commission terminates the license for the nuclear power reactor.

(r) [Reserved]

(s)(1) [Reserved]

(2)(i) [Reserved]

* * * * *

(u) [Reserved]

* * * * *

(gg)(1) Notwithstanding 10 CFR 52.103, if, following the conduct of the exercise required by paragraph IV.f.2.a of appendix E to part 50 of this chapter, FEMA identifies one or more deficiencies in the state of offsite emergency preparedness, the holder of a combined license under 10 CFR part 52 may operate at up to 5 percent of rated thermal power only if the Commission finds that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assessment of the applicant's onsite emergency plans against the pertinent standards in § 50.47 and appendix E to this part. Review of the applicant's emergency plans will include the following standards with offsite aspects:

(i) Arrangements for requesting and effectively using offsite assistance onsite have been made, arrangements to accommodate State and local staff at the licensee's Emergency Operations Facility have been made, and other organizations capable of augmenting the

planned onsite response have been identified.

* * * * *

(2) The condition in this paragraph, regarding operation at up to 5 percent power, ceases to apply 30 days after FEMA informs the NRC that the offsite deficiencies have been corrected, unless the NRC notifies the combined license holder before the expiration of the 30-day period that the Commission finds under paragraphs (s)(2) and (3) of this section that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

* * * * *

■ 4. In Appendix E to 10 CFR part 50:
■ a. Revise Section I;
■ b. In Section II, revise paragraph H; and
■ c. Revise Section IV.

The revisions read as follows:

## Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

### I. Introduction

1. Each applicant for a construction permit is required by § 50.34(a) to include in the preliminary safety analysis report a discussion of preliminary plans for coping with emergencies. Each applicant for an operating license is required by § 50.34(b) to include in the final safety analysis report plans for coping with emergencies. Each applicant for a combined license under subpart C of part 52 of this chapter is required by § 52.79 of this chapter to include in the application plans for coping with emergencies. Each applicant for an early site permit under subpart A of part 52 of this chapter may submit plans for coping with emergencies under § 52.17 of this chapter.

2. This appendix establishes minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness. These plans shall be described generally in the preliminary safety analysis report for a construction permit and submitted as part of the final safety analysis report for an operating license. These plans, or major features thereof, may be submitted as part of the site safety analysis report for an early site permit.

3. The potential radiological hazards to the public associated with the operation of research and test reactors and fuel facilities licensed under 10 CFR parts 50 and 70 involve considerations different than those associated with nuclear power reactors. Consequently, the size of Emergency Planning Zones[1] (EPZs) for facilities other than power reactors and the degree to which compliance with the requirements of this section and sections II, III, IV, and V of this appendix as necessary will be determined on a case-by-case basis.[2]

4. Notwithstanding the above paragraphs, in the case of an operating license authorizing only fuel loading and/or low power operations up to 5 percent of rated power, no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and the capability to implement State and local offsite emergency plans, as defined in this Appendix, are required prior to the issuance of such a license.

5. Each applicant for a combined license or early site permit under part 52 of this chapter whose application is docketed before December 23, 2011 may defer compliance with any change to emergency preparedness regulations under the final rule issued November 23, 2011. If that applicant chooses to defer compliance, it shall subsequently request to amend the combined license or early site permit to comply with those changes no later than December 31, 2013. An applicant that does not receive a combined license or early site permit before December 31, 2013, shall revise its combined license or early site permit application to comply with those changes no later than December 31, 2013. Notwithstanding any Commission finding under 10 CFR 52.103(g) regarding the combined license holder's facility, the combined license holder may not operate the facility until the NRC has approved the license amendment demonstrating compliance with the final rule.

6. The Tennessee Valley Authority Watts Bar Nuclear Plant, Unit 2, holding a construction permit under the provisions of part 50 of this chapter, shall meet the requirements of the final rule issued November 23, 2011 as applicable to operating nuclear power reactor licensees.

### II. The Preliminary Safety Analysis Report

* * * * *

H. A preliminary analysis reflecting the need to include facilities, systems, and methods for identifying the degree of seriousness and potential scope of radiological consequences of emergency situations within and outside the site boundary, including capabilities for dose projection using real-time meteorological information and for dispatch of radiological monitoring teams within the EPZs; and a preliminary analysis reflecting the role of the onsite technical support center and the emergency operations facility in assessing information, recommending protective action, and disseminating information to the public.

* * * * *

### IV. Content of Emergency Plans

1. The applicant's emergency plans shall contain, but not necessarily be limited to, information needed to demonstrate compliance with the elements set forth below, *i.e.,* organization for coping with radiological emergencies, assessment actions, activation of emergency organization, notification procedures, emergency facilities and equipment, training, maintaining emergency preparedness, recovery, and onsite protective actions during hostile action. In addition, the emergency response plans submitted by an applicant for a nuclear power reactor operating license under this part, or for an early site permit (as applicable) or combined license under 10 CFR part 52, shall contain information needed to demonstrate compliance with the standards described in § 50.47(b), and they will be evaluated against those standards.

2. This nuclear power reactor license applicant shall also provide an analysis of the time required to evacuate various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations, using the most recent U.S. Census Bureau data as of the date the applicant submits its application to the NRC.

3. Nuclear power reactor licensees shall use NRC approved evacuation time estimates (ETEs) and updates to the ETEs in the formulation of protective action recommendations and shall provide the ETEs and ETE updates to State and local governmental authorities for use in developing offsite protective action strategies.

4. Within 365 days of the later of the date of the availability of the most recent decennial census data from the U.S. Census Bureau or December 23, 2011, nuclear power reactor licensees shall develop an ETE analysis using this decennial data and submit it under § 50.4 to the NRC. These licensees shall submit this ETE analysis to the NRC at least 180 days before using it to form protective action recommendations and providing it to State and local governmental authorities for use in developing offsite protective action strategies.

5. During the years between decennial censuses, nuclear power reactor licensees shall estimate EPZ permanent resident population changes once a year, but no later than 365 days from the date of the previous estimate, using the most recent U.S. Census Bureau annual resident population estimate and State/local government population data, if available. These licensees shall maintain these estimates so that they are available for NRC inspection during the period between decennial censuses and shall submit these estimates to the NRC with any updated ETE analysis.

6. If at any time during the decennial period, the EPZ permanent resident population increases such that it causes the

[1] EPZs for power reactors are discussed in NUREG–0396; EPA 520/1–78–016, ''Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants,'' December 1978. The size of the EPZs for a nuclear power plant shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. Generally, the plume exposure pathway EPZ for nuclear power plants with an authorized power level greater than 250 MW thermal shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius.

[2] Regulatory Guide 2.6 will be used as guidance for the acceptability of research and test reactor emergency response plans.

longest ETE value for the 2-mile zone or 5-mile zone, including all affected Emergency Response Planning Areas, or for the entire 10-mile EPZ to increase by 25 percent or 30 minutes, whichever is less, from the nuclear power reactor licensee's currently NRC approved or updated ETE, the licensee shall update the ETE analysis to reflect the impact of that population increase. The licensee shall submit the updated ETE analysis to the NRC under § 50.4 no later than 365 days after the licensee's determination that the criteria for updating the ETE have been met and at least 180 days before using it to form protective action recommendations and providing it to State and local governmental authorities for use in developing offsite protective action strategies.

7. After an applicant for a combined license under part 52 of this chapter receives its license, the licensee shall conduct at least one review of any changes in the population of its EPZ at least 365 days prior to its scheduled fuel load. The licensee shall estimate EPZ permanent resident population changes using the most recent U.S. Census Bureau annual resident population estimate and State/local government population data, if available. If the EPZ permanent resident population increases such that it causes the longest ETE value for the 2-mile zone or 5-mile zone, including all affected Emergency Response Planning Areas, or for the entire 10-mile EPZ, to increase by 25 percent or 30 minutes, whichever is less, from the licensee's currently approved ETE, the licensee shall update the ETE analysis to reflect the impact of that population increase. The licensee shall submit the updated ETE analysis to the NRC for review under § 50.4 of this chapter no later than 365 days before the licensee's scheduled fuel load.

*A. Organization*

The organization for coping with radiological emergencies shall be described, including definition of authorities, responsibilities, and duties of individuals assigned to the licensee's emergency organization and the means for notification of such individuals in the event of an emergency. Specifically, the following shall be included:

1. A description of the normal plant operating organization.

2. A description of the onsite emergency response organization (ERO) with a detailed discussion of:

a. Authorities, responsibilities, and duties of the individual(s) who will take charge during an emergency;

b. Plant staff emergency assignments;

c. Authorities, responsibilities, and duties of an onsite emergency coordinator who shall be in charge of the exchange of information with offsite authorities responsible for coordinating and implementing offsite emergency measures.

3. A description, by position and function to be performed, of the licensee's headquarters personnel who will be sent to the plant site to augment the onsite emergency organization.

4. Identification, by position and function to be performed, of persons within the licensee organization who will be responsible for making offsite dose projections, and a description of how these projections will be made and the results transmitted to State and local authorities, NRC, and other appropriate governmental entities.

5. Identification, by position and function to be performed, of other employees of the licensee with special qualifications for coping with emergency conditions that may arise. Other persons with special qualifications, such as consultants, who are not employees of the licensee and who may be called upon for assistance for emergencies shall also be identified. The special qualifications of these persons shall be described.

6. A description of the local offsite services to be provided in support of the licensee's emergency organization.

7. By June 23, 2014, identification of, and a description of the assistance expected from, appropriate State, local, and Federal agencies with responsibilities for coping with emergencies, including hostile action at the site. For purposes of this appendix, ''hostile action'' is defined as an act directed toward a nuclear power plant or its personnel that includes the use of violent force to destroy equipment, take hostages, and/or intimidate the licensee to achieve an end. This includes attack by air, land, or water using guns, explosives, projectiles, vehicles, or other devices used to deliver destructive force.

8. Identification of the State and/or local officials responsible for planning for, ordering, and controlling appropriate protective actions, including evacuations when necessary.

9. By December 24, 2012, for nuclear power reactor licensees, a detailed analysis demonstrating that on-shift personnel assigned emergency plan implementation functions are not assigned responsibilities that would prevent the timely performance of their assigned functions as specified in the emergency plan.

*B. Assessment Actions*

1. The means to be used for determining the magnitude of, and for continually assessing the impact of, the release of radioactive materials shall be described, including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies, the Commission, and other Federal agencies, and the emergency action levels that are to be used for determining when and what type of protective measures should be considered within and outside the site boundary to protect health and safety. The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring. By June 20, 2012, for nuclear power reactor licensees, these action levels must include hostile action that may adversely affect the nuclear power plant. The initial emergency action levels shall be discussed and agreed on by the applicant or licensee and state and local governmental authorities, and approved by the NRC. Thereafter, emergency action levels shall be reviewed with the State and local governmental authorities on an annual basis.

2. A licensee desiring to change its entire emergency action level scheme shall submit an application for an amendment to its license and receive NRC approval before implementing the change. Licensees shall follow the change process in § 50.54(q) for all other emergency action level changes.

*C. Activation of Emergency Organization*

1. The entire spectrum of emergency conditions that involve the alerting or activating of progressively larger segments of the total emergency organization shall be described. The communication steps to be taken to alert or activate emergency personnel under each class of emergency shall be described. Emergency action levels (based not only on onsite and offsite radiation monitoring information but also on readings from a number of sensors that indicate a potential emergency, such as the pressure in containment and the response of the Emergency Core Cooling System) for notification of offsite agencies shall be described. The existence, but not the details, of a message authentication scheme shall be noted for such agencies. The emergency classes defined shall include: (1) Notification of unusual events, (2) alert, (3) site area emergency, and (4) general emergency. These classes are further discussed in NUREG–0654/FEMA–REP–1.

2. By June 20, 2012, nuclear power reactor licensees shall establish and maintain the capability to assess, classify, and declare an emergency condition within 15 minutes after the availability of indications to plant operators that an emergency action level has been exceeded and shall promptly declare the emergency condition as soon as possible following identification of the appropriate emergency classification level. Licensees shall not construe these criteria as a grace period to attempt to restore plant conditions to avoid declaring an emergency action due to an emergency action level that has been exceeded. Licensees shall not construe these criteria as preventing implementation of response actions deemed by the licensee to be necessary to protect public health and safety provided that any delay in declaration does not deny the State and local authorities the opportunity to implement measures necessary to protect the public health and safety.

*D. Notification Procedures*

1. Administrative and physical means for notifying local, State, and Federal officials and agencies and agreements reached with these officials and agencies for the prompt notification of the public and for public evacuation or other protective measures, should they become necessary, shall be described. This description shall include identification of the appropriate officials, by title and agency, of the State and local government agencies within the EPZs.

2. Provisions shall be described for yearly dissemination to the public within the plume exposure pathway EPZ of basic emergency planning information, such as the methods and times required for public notification and the protective actions planned if an accident occurs, general information as to the nature and effects of radiation, and a listing of local broadcast stations that will be used for dissemination of information during an

emergency. Signs or other measures shall also be used to disseminate to any transient population within the plume exposure pathway EPZ appropriate information that would be helpful if an accident occurs.

3. A licensee shall have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency. The licensee shall demonstrate that the appropriate governmental authorities have the capability to make a public alerting and notification decision promptly on being informed by the licensee of an emergency condition. Prior to initial operation greater than 5 percent of rated thermal power of the first reactor at a site, each nuclear power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ. The design objective of the prompt public alert and notification system shall be to have the capability to essentially complete the initial alerting and initiate notification of the public within the plume exposure pathway EPZ within about 15 minutes. The use of this alerting and notification capability will range from immediate alerting and notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the appropriate governmental authorities to make a judgment whether or not to activate the public alert and notification system. The alerting and notification capability shall additionally include administrative and physical means for a backup method of public alerting and notification capable of being used in the event the primary method of alerting and notification is unavailable during an emergency to alert or notify all or portions of the plume exposure pathway EPZ population. The backup method shall have the capability to alert and notify the public within the plume exposure pathway EPZ, but does not need to meet the 15-minute design objective for the primary prompt public alert and notification system. When there is a decision to activate the alert and notification system, the appropriate governmental authorities will determine whether to activate the entire alert and notification system simultaneously or in a graduated or staged manner. The responsibility for activating such a public alert and notification system shall remain with the appropriate governmental authorities.

4. If FEMA has approved a nuclear power reactor site's alert and notification design report, including the backup alert and notification capability, as of December 23, 2011, then the backup alert and notification capability requirements in Section IV.D.3 must be implemented by December 24, 2012. If the alert and notification design report does not include a backup alert and notification capability or needs revision to ensure adequate backup alert and notification capability, then a revision of the alert and notification design report must be submitted to FEMA for review by June 24, 2013, and the FEMA-approved backup alert and notification means must be implemented within 365 days after FEMA approval. However, the total time period to implement a FEMA-approved backup alert and notification means must not exceed June 22, 2015.

*E. Emergency Facilities and Equipment*

Adequate provisions shall be made and described for emergency facilities and equipment, including:

1. Equipment at the site for personnel monitoring;

2. Equipment for determining the magnitude of and for continuously assessing the impact of the release of radioactive materials to the environment;

3. Facilities and supplies at the site for decontamination of onsite individuals;

4. Facilities and medical supplies at the site for appropriate emergency first aid treatment;

5. Arrangements for medical service providers qualified to handle radiological emergencies onsite;

6. Arrangements for transportation of contaminated injured individuals from the site to specifically identified treatment facilities outside the site boundary;

7. Arrangements for treatment of individuals injured in support of licensed activities on the site at treatment facilities outside the site boundary;

8.a. (i) A licensee onsite technical support center and an emergency operations facility from which effective direction can be given and effective control can be exercised during an emergency;

(ii) For nuclear power reactor licensees, a licensee onsite operational support center;

b. For a nuclear power reactor licensee's emergency operations facility required by paragraph 8.a of this section, either a facility located between 10 miles and 25 miles of the nuclear power reactor site(s), or a primary facility located less than 10 miles from the nuclear power reactor site(s) and a backup facility located between 10 miles and 25 miles of the nuclear power reactor site(s). An emergency operations facility may serve more than one nuclear power reactor site. A licensee desiring to locate an emergency operations facility more than 25 miles from a nuclear power reactor site shall request prior Commission approval by submitting an application for an amendment to its license. For an emergency operations facility located more than 25 miles from a nuclear power reactor site, provisions must be made for locating NRC and offsite responders closer to the nuclear power reactor site so that NRC and offsite responders can interact face-to-face with emergency response personnel entering and leaving the nuclear power reactor site. Provisions for locating NRC and offsite responders closer to a nuclear power reactor site that is more than 25 miles from the emergency operations facility must include the following:

(1) Space for members of an NRC site team and Federal, State, and local responders;

(2) Additional space for conducting briefings with emergency response personnel;

(3) Communication with other licensee and offsite emergency response facilities;

(4) Access to plant data and radiological information; and

(5) Access to copying equipment and office supplies;

c. By June 20, 2012, for a nuclear power reactor licensee's emergency operations facility required by paragraph 8.a of this section, a facility having the following capabilities:

(1) The capability for obtaining and displaying plant data and radiological information for each reactor at a nuclear power reactor site and for each nuclear power reactor site that the facility serves;

(2) The capability to analyze plant technical information and provide technical briefings on event conditions and prognosis to licensee and offsite response organizations for each reactor at a nuclear power reactor site and for each nuclear power reactor site that the facility serves; and

(3) The capability to support response to events occurring simultaneously at more than one nuclear power reactor site if the emergency operations facility serves more than one site; and

d. For nuclear power reactor licensees, an alternative facility (or facilities) that would be accessible even if the site is under threat of or experiencing hostile action, to function as a staging area for augmentation of emergency response staff and collectively having the following characteristics: the capability for communication with the emergency operations facility, control room, and plant security; the capability to perform offsite notifications; and the capability for engineering assessment activities, including damage control team planning and preparation, for use when onsite emergency facilities cannot be safely accessed during hostile action. The requirements in this paragraph 8.d must be implemented no later than December 23, 2014, with the exception of the capability for staging emergency response organization personnel at the alternative facility (or facilities) and the capability for communications with the emergency operations facility, control room, and plant security, which must be implemented no later than June 20, 2012.

e. A licensee shall not be subject to the requirements of paragraph 8.b of this section for an existing emergency operations facility approved as of December 23, 2011;

9. At least one onsite and one offsite communications system; each system shall have a backup power source. All communication plans shall have arrangements for emergencies, including titles and alternates for those in charge at both ends of the communication links and the primary and backup means of communication. Where consistent with the function of the governmental agency, these arrangements will include:

a. Provision for communications with contiguous State/local governments within the plume exposure pathway EPZ. Such communications shall be tested monthly.

b. Provision for communications with Federal emergency response organizations. Such communications systems shall be tested annually.

c. Provision for communications among the nuclear power reactor control room, the

onsite technical support center, and the emergency operations facility; and among the nuclear facility, the principal State and local emergency operations centers, and the field assessment teams. Such communications systems shall be tested annually.

d. Provisions for communications by the licensee with NRC Headquarters and the appropriate NRC Regional Office Operations Center from the nuclear power reactor control room, the onsite technical support center, and the emergency operations facility. Such communications shall be tested monthly.

*F. Training*

1. The program to provide for: (a) The training of employees and exercising, by periodic drills, of emergency plans to ensure that employees of the licensee are familiar with their specific emergency response duties, and (b) The participation in the training and drills by other persons whose assistance may be needed in the event of a radiological emergency shall be described. This shall include a description of specialized initial training and periodic retraining programs to be provided to each of the following categories of emergency personnel:

i. Directors and/or coordinators of the plant emergency organization;

ii. Personnel responsible for accident assessment, including control room shift personnel;

iii Radiological monitoring teams;

iv. Fire control teams (fire brigades);

v. Repair and damage control teams;

vi. First aid and rescue teams;

vii. Medical support personnel;

viii. Licensee's headquarters support personnel;

ix. Security personnel.

In addition, a radiological orientation training program shall be made available to local services personnel; *e.g.,* local emergency services/Civil Defense, local law enforcement personnel, local news media persons.

2. The plan shall describe provisions for the conduct of emergency preparedness exercises as follows: Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communications networks, test the public alert and notification system, and ensure that emergency organization personnel are familiar with their duties.[3]

a. A full participation[4] exercise which tests as much of the licensee, State, and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located. Nuclear power reactor licensees shall submit exercise scenarios under § 50.4 at least 60 days before use in a full participation exercise required by this paragraph 2.a.

(i) For an operating license issued under this part, this exercise must be conducted within two years before the issuance of the first operating license for full power (one authorizing operation above 5 percent of rated power) of the first reactor and shall include participation by each State and local government within the plume exposure pathway EPZ and each state within the ingestion exposure pathway EPZ. If the full participation exercise is conducted more than 1 year prior to issuance of an operating licensee for full power, an exercise which tests the licensee's onsite emergency plans must be conducted within one year before issuance of an operating license for full power. This exercise need not have State or local government participation.

(ii) For a combined license issued under part 52 of this chapter, this exercise must be conducted within two years of the scheduled date for initial loading of fuel. If the first full participation exercise is conducted more than one year before the scheduled date for initial loading of fuel, an exercise which tests the licensee's onsite emergency plans must be conducted within one year before the scheduled date for initial loading of fuel. This exercise need not have State or local government participation. If FEMA identifies one or more deficiencies in the state of offsite emergency preparedness as the result of the first full participation exercise, or if the Commission finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) apply.

(iii) For a combined license issued under part 52 of this chapter, if the applicant currently has an operating reactor at the site, an exercise, either full or partial participation,[5] shall be conducted for each subsequent reactor constructed on the site. This exercise may be incorporated in the exercise requirements of Sections IV.F.2.b. and c. in this appendix. If FEMA identifies one or more deficiencies in the state of offsite emergency preparedness as the result of this exercise for the new reactor, or if the Commission finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the provisions of § 50.54(gg) apply.

b. Each licensee at each site shall conduct a subsequent exercise of its onsite emergency plan every 2 years. Nuclear power reactor licensees shall submit exercise scenarios under § 50.4 at least 60 days before use in an exercise required by this paragraph 2.b. The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section. In addition, the licensee shall take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills, including at least one drill involving a combination of some of the principal functional areas of the licensee's onsite emergency response capabilities. The principal functional areas of emergency response include activities such as management and coordination of emergency response, accident assessment, event classification, notification of offsite authorities, assessment of the onsite and offsite impact of radiological releases, protective action recommendation development, protective action decision making, plant system repair and mitigative action implementation. During these drills, activation of all of the licensee's emergency response facilities (Technical Support Center (TSC), Operations Support Center (OSC), and the Emergency Operations Facility (EOF)) would not be necessary, licensees would have the opportunity to consider accident management strategies, supervised instruction would be permitted, operating staff in all participating facilities would have the opportunity to resolve problems (success paths) rather than have controllers intervene, and the drills may focus on the onsite exercise training objectives.

c. Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every two years and shall, at least, partially participate in other offsite plan exercises in this period. If two different licensees each have licensed facilities located either on the same site or on adjacent, contiguous sites, and share most of the elements defining co-located licensees,[6] then each licensee shall:

(1) Conduct an exercise biennially of its onsite emergency plan;

(2) Participate quadrennially in an offsite biennial full or partial participation exercise;

(3) Conduct emergency preparedness activities and interactions in the years between its participation in the offsite full or partial participation exercise with offsite authorities, to test and maintain interface among the affected State and local authorities and the licensee. Co-located licensees shall also participate in emergency preparedness

[3] Use of site specific simulators or computers is acceptable for any exercise.

[4] Full participation when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. Full participation includes testing major observable portions of the onsite and offsite emergency plans and mobilization of State, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario.

[5] Partial participation when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; *i.e.,* (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

[6] Co-located licensees are two different licensees whose licensed facilities are located either on the same site or on adjacent, contiguous sites, and that share most of the following emergency planning and siting elements:

a. Plume exposure and ingestion emergency planning zones;

b. Offsite governmental authorities;

c. Offsite emergency response organizations;

d. Public notification system; and/or

e. Emergency facilities.

activities and interaction with offsite authorities for the period between exercises;

(4) Conduct a hostile action exercise of its onsite emergency plan in each exercise cycle; and

(5) Participate in an offsite biennial full or partial participation hostile action exercise in alternating exercise cycles.

d. Each State with responsibility for nuclear power reactor emergency preparedness should fully participate in the ingestion pathway portion of exercises at least once every exercise cycle. In States with more than one nuclear power reactor plume exposure pathway EPZ, the State should rotate this participation from site to site. Each State with responsibility for nuclear power reactor emergency preparedness should fully participate in a hostile action exercise at least once every cycle and should fully participate in one hostile action exercise by December 31, 2015. States with more than one nuclear power reactor plume exposure pathway EPZ should rotate this participation from site to site.

e. Licensees shall enable any State or local government located within the plume exposure pathway EPZ to participate in the licensee's drills when requested by such State or local government.

f. Remedial exercises will be required if the emergency plan is not satisfactorily tested during the biennial exercise, such that NRC, in consultation with FEMA, cannot (1) find reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency or (2) determine that the Emergency Response Organization (ERO) has maintained key skills specific to emergency response. The extent of State and local participation in remedial exercises must be sufficient to show that appropriate corrective measures have been taken regarding the elements of the plan not properly tested in the previous exercises.

g. All exercises, drills, and training that provide performance opportunities to develop, maintain, or demonstrate key skills must provide for formal critiques in order to identify weak or deficient areas that need correction. Any weaknesses or deficiencies that are identified in a critique of exercises, drills, or training must be corrected.

h. The participation of State and local governments in an emergency exercise is not required to the extent that the applicant has identified those governments as refusing to participate further in emergency planning activities, pursuant to § 50.47(c)(1). In such cases, an exercise shall be held with the applicant or licensee and such governmental entities as elect to participate in the emergency planning process.

i. Licensees shall use drill and exercise scenarios that provide reasonable assurance that anticipatory responses will not result from preconditioning of participants. Such scenarios for nuclear power reactor licensees must include a wide spectrum of radiological releases and events, including hostile action. Exercise and drill scenarios as appropriate must emphasize coordination among onsite and offsite response organizations.

j. The exercises conducted under paragraph 2 of this section by nuclear power reactor licensees must provide the opportunity for the ERO to demonstrate proficiency in the key skills necessary to implement the principal functional areas of emergency response identified in paragraph 2.b of this section. Each exercise must provide the opportunity for the ERO to demonstrate key skills specific to emergency response duties in the control room, TSC, OSC, EOF, and joint information center. Additionally, in each eight calendar year exercise cycle, nuclear power reactor licensees shall vary the content of scenarios during exercises conducted under paragraph 2 of this section to provide the opportunity for the ERO to demonstrate proficiency in the key skills necessary to respond to the following scenario elements: hostile action directed at the plant site, no radiological release or an unplanned minimal radiological release that does not require public protective actions, an initial classification of or rapid escalation to a Site Area Emergency or General Emergency, implementation of strategies, procedures, and guidance developed under § 50.54(hh)(2), and integration of offsite resources with onsite response. The licensee shall maintain a record of exercises conducted during each eight year exercise cycle that documents the content of scenarios used to comply with the requirements of this paragraph. Each licensee shall conduct a hostile action exercise for each of its sites no later than December 31, 2015. The first eight-year exercise cycle for a site will begin in the calendar year in which the first hostile action exercise is conducted. For a site licensed under Part 52, the first eight-year exercise cycle begins in the calendar year of the initial exercise required by Section IV.F.2.a.

*G. Maintaining Emergency Preparedness*

Provisions to be employed to ensure that the emergency plan, its implementing procedures, and emergency equipment and supplies are maintained up to date shall be described.

*H. Recovery*

Criteria to be used to determine when, following an accident, reentry of the facility would be appropriate or when operation could be resumed shall be described.

*I. Onsite Protective Actions During Hostile Action*

By June 20, 2012, for nuclear power reactor licensees, a range of protective actions to protect onsite personnel during hostile action must be developed to ensure the continued ability of the licensee to safely shut down the reactor and perform the functions of the licensee's emergency plan.

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 5. The authority citation for part 52 continues to read as follows:

**Authority:** Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

■ 6. In § 52.79, paragraph (a)(17) is revised to read as follows:

### § 52.79 Contents of applications; technical information in final safety analysis report.

(a) * * *

(17) The information with respect to compliance with technically relevant positions of the Three Mile Island requirements in § 50.34(f) of this chapter, with the exception of § 50.34(f)(1)(xii), (f)(2)(ix), (f)(2)(xxv), and (f)(3)(v);

* * * * *

Dated at Rockville, Maryland, this 10th day of November 2011.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2011–29735 Filed 11–22–11; 8:45 am]

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Part IV

## The President


Proclamation 8756—National Family Week, 2011
Proclamation 8757—National Farm-City Week, 2011
Proclamation 8758—National Child's Day, 2011
Executive Order 13590—Authorizing the Imposition of Certain Sanctions With Respect to the Provision of Goods, Services, Technology, or Support for Iran's Energy and Petrochemical Sectors

Federal Register
Vol. 76, No. 226
Wednesday, November 23, 2011

# Presidential Documents

Title 3—

The President

**Proclamation 8756 of November 18, 2011**

## National Family Week, 2011

**By the President of the United States of America**

**A Proclamation**

For generations, American families have empowered our sons and daughters with boundless love, giving them the courage to pursue their dreams. This week, we celebrate the threads of compassion and unity that tie our families together, enrich our communities, and strengthen the fabric of our Nation.

My Administration remains steadfast in our commitment to families across America. To ensure our children get a strong start, we are bolstering early learning programs and promoting education reform that will do more to bring every student the best our schools have to offer. By investing in Pell Grants and community colleges, we are working to make higher education affordable for more families and build a workforce of tomorrow that will excel in the global economy. And by taking executive action to lighten financial burdens on many middle class families, we are making it more affordable to pay back student loans and easier for homeowners to refinance their mortgages. As our families work hard to meet their obligations, these actions will give them the help they need to thrive in the years to come.

During National Family Week, let us also reflect on the contributions and sacrifices of our service members and their loved ones. Our troops and military families serve with valor at home and overseas, and as a Nation we have a moral obligation to serve these patriots as well as they have served us. To better fulfill this promise, First Lady Michelle Obama and Dr. Jill Biden launched Joining Forces earlier this year, an initiative that challenges all Americans to make a difference in the lives of our veterans and military families.

As we gather with our loved ones this holiday season, let us pause to give thanks to all those who share in the trials and triumphs of our lives. Our families illuminate our days and bring meaning to our years, and their love has the power to see us through our greatest challenges. This week and throughout the year, let us strive to give back to our friends, families, communities, and neighbors, and to work together in pursuit of our highest ambitions.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 20 through November 26, 2011, as National Family Week. I invite all States, communities, and individuals to join in observing this week with appropriate ceremonies and activities to honor our Nation's families.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–30454
Filed 11–22–11; 11:15 am]
Billing code 3295–F2–P

# Presidential Documents

**Proclamation 8757 of November 18, 2011**

## National Farm-City Week, 2011

**By the President of the United States of America**

**A Proclamation**

With tenacity, resilience, and humility, our farmers and ranchers have helped drive our Nation's growth for generations. Season after season, their careful stewardship and dedication brings an abundance of wholesome food, plentiful fiber, a stronger economy, and new opportunities to secure our clean energy future. During National Farm-City Week, we celebrate the essential contributions of farmers and ranchers to our country's well-being and recommit to a prosperous and sustainable future for American agriculture.

As our urban centers continue to grow, we look to our fields and ranches to supply our markets and families with fresh, healthy food. To help our farming communities meet the challenges of the 21st century, I established the White House Rural Council earlier this year. By partnering with leaders in rural America, we have worked to cultivate local and regional food systems, empower young and beginning farmers, and support rural businesses. Together, we stand with our rural communities and reaffirm our commitment to their continued success.

To make a lasting investment in our Nation's energy future, my Administration is taking action to promote renewable energy production across rural America. As part of a comprehensive strategy to build our clean energy economy, we are working to produce more renewable, domestic biofuels and to help bring solar panel arrays and wind turbines to rural businesses. By finding new ways to harness homegrown fuels in small towns and on family farms, we can create new jobs, improve our energy security, and unlock additional sources of income for farmers.

This week, we honor the individuals, families, and communities who provide us the staple foods that sustain our Nation. As we gather with family and friends this Thanksgiving, let us pay tribute to the men and women whose hard work brought the bounty we find before us from farm to fork.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 18 through November 24, 2011, as National Farm-City Week. I call upon all Americans to reflect on the vital contributions of those who dedicate their lives to promoting our Nation's agricultural abundance and environmental stewardship.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–30461
Filed 11–22–11; 11:15 am]
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# Presidential Documents

**Proclamation 8758 of November 18, 2011**

## National Child's Day, 2011

**By the President of the United States of America**

**A Proclamation**

As a Nation, we carry a fundamental responsibility to unlock the potential within every child. To prepare our children for the 21st century, we must continue to make investments in their health, development, and learning that will be lasting cornerstones of their success. Today, we celebrate our sons and daughters, and we recommit to giving them the future they deserve.

My Administration is committed to providing our children with the care and support that will give them a strong, healthy start. To help ensure all children have access to nutritious meals and encourage healthy choices early in life, I signed the Healthy, Hunger-Free Kids Act last year. We also launched MyPlate, a new food icon that can guide children and adults alike on healthy portions as they choose their next meal. These efforts go hand-in-hand with First Lady Michelle Obama's *Let's Move!* initiative, which is dedicated to solving the problem of childhood obesity within a generation. This year, over 1,250 schools took action to meet rigorous nutrition standards and expand opportunities for physical activity as part of our HealthierUS School Challenge, and 1.7 million Americans achieved the Presidential Active Lifestyle Award. By empowering children and their caregivers with the tools they need to eat well and lead active lifestyles, we take steps to instill healthy habits that will last into adulthood.

To build a more prosperous future for our children, we must equip them with a world-class education. My Administration is advancing educational opportunities for students of all ages, from early learning programs that start our children down the right path, to Pell Grants that open higher education to more Americans. In communities across our Nation, parents, teachers, principals, and school boards are coming together to develop stronger educational standards that will reward progress and accelerate student achievements. As we work to ensure every classroom is a safe, supportive place where students can cultivate a love of learning, we advance our goal of putting an outstanding education within reach for every child.

On National Child's Day, we remember that the promise of a brighter tomorrow is fulfilled by what we do for our children today. As Americans, all of us share in the responsibility to do our utmost to give our children the love, safety, and protection that will nourish their development as healthy and productive individuals. Let us kindle in them the hunger for knowledge, the courage to follow their dreams, and the spirit to pursue possibility wherever it may lead.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 20, 2011, as National Child's Day. I call upon all citizens to observe this day with appropriate activities, programs, and ceremonies, and to rededicate ourselves to creating the bright future we want for our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–30462
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# Presidential Documents

**Executive Order 13590 of November 20, 2011**

## Authorizing the Imposition of Certain Sanctions With Respect to the Provision of Goods, Services, Technology, or Support for Iran's Energy and Petrochemical Sectors

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.)* (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.),* and section 301 of title 3, United States Code, and in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995,

I, BARACK OBAMA, President of the United States of America, hereby order:

**Section 1.** The Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative, and with the President of the Export-Import Bank, the Chairman of the Board of Governors of the Federal Reserve System, and other agencies and officials as appropriate, is hereby authorized to impose on a person any of the sanctions described in section 2 or 3 of this order upon determining that the person:

(a) knowingly, on or after the effective date of this order, sells, leases, or provides to Iran goods, services, technology, or support that has a fair market value of $1,000,000 or more or that, during a 12-month period, has an aggregate fair market value of $5,000,000 or more, and that could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources located in Iran;

(b) knowingly, on or after the effective date of this order, sells, leases, or provides to Iran goods, services, technology, or support that has a fair market value of $250,000 or more or that, during a 12-month period, has an aggregate fair market value of $1,000,000 or more, and that could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of petrochemical products;

(c) is a successor entity to a person referred to in subsection (a) or (b) of this section;

(d) owns or controls a person referred to in subsection (a) or (b) of this section, and had actual knowledge or should have known that the person engaged in the activities referred to in that subsection; or

(e) is owned or controlled by, or under common ownership or control with, a person referred to in subsection (a) or (b) of this section, and knowingly participated in the activities referred to in that subsection.

**Sec. 2.** When the Secretary of State, in accordance with the terms of section 1 of this order, has determined that a person meets any of the criteria described in section 1 and has selected any of the sanctions set forth below to impose on that person, the heads of relevant agencies, in consultation with the Secretary of State, shall take the following actions where necessary to implement the sanctions imposed by the Secretary of State:

(a) the Board of Directors of the Export-Import Bank shall deny approval of the issuance of any guarantee, insurance, extension of credit, or participation in an extension of credit in connection with the export of any goods or services to the sanctioned person;

(b) agencies shall not issue any specific license or grant any other specific permission or authority under any statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or technology to the sanctioned person;

(c) with respect to a sanctioned person that is a financial institution:

(i) the Chairman of the Board of Governors of the Federal Reserve System and the President of the Federal Reserve Bank of New York shall take such actions as they deem appropriate, including denying designation, or terminating the continuation of any prior designation of, the sanctioned person as a primary dealer in United States Government debt instruments; or

(ii) agencies shall prevent the sanctioned person from serving as an agent of the United States Government or serving as a repository for United States Government funds; or

(d) agencies shall not procure, or enter into a contract for the procurement of, any goods or services from the sanctioned person.

(e) The prohibitions in subsections (a)-(d) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

**Sec. 3.** (a) When the Secretary of State, in accordance with the terms of section 1 of this order, has determined that a person has engaged in the activities described in section 1 and has selected any of the sanctions set forth below to impose on that person, the Secretary of the Treasury, in consultation with the Secretary of State, shall take the following actions where necessary to implement the sanctions imposed by the Secretary of State:

(i) prohibit any United States financial institution from making loans or providing credits to the sanctioned person totaling more than $10,000,000 in any 12-month period unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;

(ii) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;

(iii) prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;

(iv) block all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any foreign branch, of the sanctioned person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in; or (v) restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person.

(b) I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the type of articles specified in such section by, to, or for the benefit of any sanctioned person whose property and interests in property are blocked pursuant to subsection (a)(iv) of this section would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by subsection (a)(iv) of this section.

(c) The prohibitions in subsection (a)(iv) of this section include, but are not limited to:

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any sanctioned person whose property and interests in property are blocked pursuant to this order; and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such sanctioned person.

(d) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

**Sec. 4.** (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

**Sec. 5.** For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term ''financial institution'' includes (i) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act) (12 U.S.C. 1813(c)(1)), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) (12 U.S.C. 3101(7)); (ii) a credit union; (iii) a securities firm, including a broker or dealer; (iv) an insurance company, including an agency or underwriter; and (v) any other company that provides financial services;

(e) the term ''United States financial institution'' means a financial institution (including its foreign branches) organized under the laws of the United States or any jurisdiction within the United States or located in the United States;

(f) the term ''sanctioned person'' means a person on whom the Secretary of State, in accordance with the terms of section 1 of this order, has determined to impose sanctions pursuant to section 1;

(g) the term ''to develop'' petroleum resources means to explore for, or to extract, refine, or transport by pipeline, petroleum resources;

(h) the term ''Iran'' means the Government of Iran and the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements;

(i) the term ''Government of Iran'' includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(j) the term ''knowingly,'' with respect to a conduct, a circumstance, or a result, means that the person has actual knowledge, or should have known, of the conduct, the circumstance, or the result;

(k) the term ''petroleum resources'' includes petroleum, oil, natural gas, liquefied natural gas, and refined petroleum products;

(l) the term ''refined petroleum products'' means diesel, gasoline, jet fuel (including naptha-type and kerosene-type jet fuel), and aviation gasoline; and

(m) the term ''petrochemical products'' includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea.

**Sec. 6.** For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to section 3(a)(iv) of this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of an action taken pursuant to section 3(a)(iv) of this order.

**Sec. 7.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of section 3 of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

**Sec. 8.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**Sec. 9.** The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

**Sec. 10.** This order is effective at 12:01 a.m. eastern standard time on November 21, 2011.

THE WHITE HOUSE,

*November 20, 2011.*

[FR Doc. 2011–30463

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**Federal Register**

Vol. 76, No. 226

Wednesday, November 23, 2011

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## FEDERAL REGISTER PAGES AND DATE, NOVEMBER

67315–67580 ..... 1
67581–68056 ..... 2
68057–68296 ..... 3
68297–68624 ..... 4
68625–69082 ..... 7
69083–69600 ..... 8
69601–70036 ..... 9
70037–70320 ..... 10
70321–70634 ..... 14
70635–70864 ..... 15
70865–71240 ..... 16
71241–71448 ..... 17
71449–71864 ..... 18
71865–72080 ..... 21
72081–72300 ..... 22
72301–72612 ..... 23

## CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**2 CFR**

**Proposed Rules:**
Ch. XX ..... 70913

**3 CFR**

**Proclamations:**
8742 ..... 68273
8743 ..... 68611
8744 ..... 68613
8745 ..... 68615
8746 ..... 68617
8747 ..... 68619
8748 ..... 68621
8749 ..... 68623
8750 ..... 68625
8751 ..... 69081
8752 ..... 70633
8753 ..... 71447
8754 ..... 71863
8755 ..... 72079
8756 ..... 72603
8757 ..... 72605
8758 ..... 72607

**Executive Orders:**
13588 ..... 68295
13589 ..... 70863
13590 ..... 72609

**Administrative Orders:**
Memorandums:
Memorandums of October 28, 2011 ..... 68049
Notices:
Notice of November 1, 2011 ..... 68055
Notice of November 7, 2011 ..... 70035
Notice of November 9, 2011 ..... 70319
Presidential Determination No. 2012–02 of October 14, 2011 ..... 70635

**5 CFR**

530 ..... 68631
531 ..... 68631
532 ..... 70321
536 ..... 68631
731 ..... 69601
Ch. III ..... 70037
Ch. XXXVII ..... 70322

**Proposed Rules:**
532 ..... 70365
2635 ..... 70667
Ch. XXIV ..... 70913
Ch. XLVIII ..... 70913

**6 CFR**

5 ..... 70637, 70638

**Proposed Rules:**
5 ..... 67621
31 ..... 70366

**7 CFR**

275 ..... 67315
301 ..... 72081
319 ..... 67581, 68057
958 ..... 67317
984 ..... 67320
1205 ..... 69083
1214 ..... 69094, 69110, 71241
2502 ..... 69114, 70639

**Proposed Rules:**
205 ..... 69141
319 ..... 67379
457 ..... 71271, 71276
759 ..... 70368
762 ..... 70368
930 ..... 69673
987 ..... 69678
1945 ..... 70368
2502 ..... 69146

**8 CFR**

103 ..... 69119

**9 CFR**

93 ..... 70037
94 ..... 70037
98 ..... 70037
381 ..... 68058

**Proposed Rules:**
319 ..... 69146
381 ..... 69146
416 ..... 72331
417 ..... 72331
430 ..... 72331

**10 CFR**

1 ..... 72082
9 ..... 72082
19 ..... 72082
20 ..... 72082
30 ..... 72082
35 ..... 72082
40 ..... 69120, 72082
50 ..... 72560
52 ..... 72082, 72560
55 ..... 72082
60 ..... 72082
61 ..... 72082
70 ..... 72082
72 ..... 70331
73 ..... 72082
110 ..... 72082
170 ..... 72082
171 ..... 72082
430 ..... 70548, 70865, 71836
431 ..... 69122

**Proposed Rules:**
Ch. I ..... 70913
51 ..... 70067
72 ..... 70374
429 ..... 69870, 70918, 72332
430 ..... 69147, 69870, 70918,

72332
431 ....70376
609 ....67622
950 ....67622

**11 CFR**

7 ....70322
201 ....70322

**12 CFR**

204 ....68064
243 ....67323
381 ....67323
701 ....67583
705 ....67583
741 ....67583
**Proposed Rules:**
44 ....68846
248 ....68846
351 ....68846
652 ....71798
1290 ....70069

**13 CFR**

**Proposed Rules:**
121 ....69154, 70667, 70680
124 ....69154
125 ....69154
126 ....69154
127 ....69154

**14 CFR**

23 ....72087

25 ....71865
39 ....67341, 67343, 67346, 67591, 67594, 68297, 68299, 68301, 68304, 68306, 68634, 68636, 69123, 70040, 70042, 70044, 70046, 70334, 70336, 71241, 71246, 72091
71 ....67596, 69608, 70051, 70865, 72093
73 ....69125
95 ....72094
97 ....70053, 70055
**Proposed Rules:**
39 ....67625, 67628, 67631, 67633, 68366, 68368, 68660, 68661, 68663, 68666, 68668, 68671, 69155, 69157, 69159, 69161, 69163, 69166, 69168, 69685, 70377, 70379, 70382, 71470, 71472, 72128, 72130, 72348, 72350, 72353
71 ....68674, 70919, 70920
183 ....69171
382 ....71914

**15 CFR**

738 ....70337
740 ....70337
744 ....71867
748 ....69609, 70337
902 ....68310
922 ....67348
**Proposed Rules:**
738 ....68675
740 ....68675
742 ....68675
770 ....68675
772 ....68675
774 ....68675

**16 CFR**

1107 ....69586
1109 ....69546
**Proposed Rules:**
301 ....72132
303 ....68690
Ch. II ....69596
1107 ....69482

**17 CFR**

1 ....69334, 71626
4 ....71128
21 ....69334
39 ....69334
140 ....69334
150 ....71626
151 ....71626
200 ....67597, 71449, 71872
201 ....71872
202 ....71872
210 ....71872
229 ....71872
230 ....71872
232 ....71872
239 ....71872
240 ....71872
243 ....71872
249 ....71872
250 ....71872
251 ....71872
256 ....71872
257 ....71872
259 ....71872
260 ....71872
270 ....71872
274 ....71872
275 ....71128, 71872
279 ....71128
**Proposed Rules:**
255 ....68846

**18 CFR**

284 ....72301
**Proposed Rules:**
Ch. I ....70913
11 ....72134

**19 CFR**

4 ....68066
10 ....68067
24 ....68067
162 ....68067
163 ....68067
178 ....68067
210 ....71248
**Proposed Rules:**
101 ....69688

**21 CFR**

501 ....71248
**Proposed Rules:**
866 ....69034
1140 ....71281
1300 ....72355

**22 CFR**

42 ....67361
123 ....68311
126 ....68313, 69612
**Proposed Rules:**
120 ....72246
121 ....68694
123 ....72246
124 ....72246
126 ....72246
127 ....72246
129 ....72246

**24 CFR**

17 ....69044
200 ....72306
**Proposed Rules:**
100 ....70921
905 ....71287
1000 ....71474

**26 CFR**

1 ....71255, 71450, 71878
20 ....69126
26 ....70340
31 ....67363
301 ....67363, 70057, 70340, 71259
**Proposed Rules:**
1 ....68119, 68370, 68373, 69172, 69188, 71919, 72362, 72367
20 ....71491
31 ....67384
301 ....67384
602 ....68119, 72367

**27 CFR**

9 ....70866
**Proposed Rules:**
4 ....68373
9 ....69198

**29 CFR**

1980 ....68084
4022 ....70639
**Proposed Rules:**
101 ....72368
102 ....72368
103 ....72368

**30 CFR**

**Proposed Rules:**
75 ....70075
902 ....67635
948 ....67637

**31 CFR**

1 ....70640
**Proposed Rules:**
1 ....71293
1010 ....69204
1030 ....69204

**32 CFR**

174 ....70878
706 ....68097
1701 ....67599
**Proposed Rules:**
165 ....68376

**33 CFR**

100 ....68314, 69613, 69622, 70342, 70644
117 ....68098, 69131, 69632, 69633, 70342, 70345, 70346, 70348, 70349, 71260, 72308,72309
165 ....68098, 68101, 69131, 69613, 69622, 69634, 70342, 70350, 70647, 70649, 70882
**Proposed Rules:**
117 ....70384
135 ....67385
136 ....67385
165 ....72369
167 ....67395
Ch. II ....70927

**37 CFR**

1 ....70651, 72270
2 ....69132
7 ....69132
41 ....72270
**Proposed Rules:**
3 ....72372

**38 CFR**

3 ....70883
59 ....70885
**Proposed Rules:**
17 ....71920
51 ....70076

**39 CFR**

3055 ....70653
**Proposed Rules:**
3050 ....71498

**40 CFR**

9 ....69134
26 ....71880
52 ....67366, 67369, 67600, 68103, 68106, 68317, 68638, 69052, 69135, 69896, 69928, 70352, 70354, 70361, 70656, 70886, 70888, 71260, 71450, 71452, 71455, 71881, 71886
63 ....70834, 72050
81 ....70361, 71452, 71455, 72097
112 ....72120
180 ....69636, 69642, 69648, 69653, 69659, 69662, 70890, 70896, 71459
261 ....72311
300 ....70057
372 ....69136, 70361
**Proposed Rules:**
52 ....67396, 67640, 68378, 68381, 68385, 68698, 68699, 69214, 69217, 70078, 70091, 70929, 70940, 70952, 71922, 72142, 72374, 72377
63 ....72508
81 ....70078, 70091
158 ....71294
161 ....71294
180 ....69680, 69692, 69693
280 ....71708
281 ....71708
300 ....70105, 71500

**41 CFR**

101–26 ....67370
102–39 ....67371
302–3 ....71888
302–9 ....71888
303–70 ....71890

**42 CFR**

Ch. IV ....67992
409 ....68526
413 ....70228
414 ....70228
424 ....68526
425 ....67802
484 ....68526
Ch. V ....67992

**44 CFR**

64 ....67372, 70899

65.....68322, 68325
67.....68107, 69665
**Proposed Rules:**
67 .....70386, 70397, 70403

**45 CFR**

5b.....72325
1307.....70010

**46 CFR**

160.....70062
180.....70062
199.....70062

**47 CFR**

0.....70902, 70904
1.....68641, 70904
2.....67604
15.....71892
27.....71909
43.....68641
64 .....68116, 68328, 68642, 72124
73 .....67375, 68117, 70660, 70904, 71267, 71909
74.....70660, 70904
79 .....67366, 67377, 68117
80.....67604
90.....71909
**Proposed Rules:**
73 .....67397, 68124, 69222, 72144
79.....67397

**48 CFR**

Ch. 1.....68014, 68044, 70037
1 .....68015, 68017, 68043
2.....68015, 68026
3.....68017
4 .....68027, 68028, 68043
8.....68032, 68043
12.....68017, 68032
16.....68032
19.....68026, 68032
22.....68015
25 .....68027, 68028, 68037, 68039
31.....68040
38.....68032
52 .....68015, 68026, 68027, 68028, 68032, 68039
Ch. 2.....71467
202.....71833
203.....71826
211.....71831
212.....71464
215.....71465
216.....71465
218.....71833
219.....71467
225.....71831
232.....71468
242.....71830
245.....71824
252.....71464, 71826
1809.....72327
1850.....72328
1852.....72328
3009.....70660
3052.....70660
**Proposed Rules:**
204.....70106, 71922
209.....71922
212.....71926
216.....71922
229.....71922
232.....71928
244.....71926
252 .....70106, 71922, 71926, 71928

**49 CFR**

242.....69802
384.....68328
391.....70661
805.....71909
1011.....70664
**Proposed Rules:**
10.....71930
192.....70953
633.....67400

**50 CFR**

21.....71910
300 .....67401, 68332, 70062, 71469
622 .....67618, 68310, 68339, 69136
635 .....69137, 69139, 70064
648 .....68642, 68657, 70912, 72125
660 .....68349, 68658, 70362
679 .....68354, 68658, 70665, 71269, 71913
680.....68358
**Proposed Rules:**
17 .....67401, 68393, 71300
21 .....67650, 69223, 69225
92.....68264
216.....70695
218.....70695
223.....67652
224.....67652
226.....68710
622 .....67656, 68711, 69230
635.....72382, 72383
679.....72384
697.....71501

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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**H.R. 2112/P.L. 112–55**
Consolidated and Further Continuing Appropriations Act, 2012 (Nov. 18, 2011; 125 Stat. 552)
**Last List November 18, 2011**

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