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Presidential Documents

Title 3—

The President

Executive Order 13601 of February 28, 2012

Establishment of the Interagency Trade Enforcement Center

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance U.S. foreign policy and protect the national and economic security of the United States through strengthened and coordinated enforcement of U.S. trade rights under international trade agreements and enforcement of domestic trade laws, it is hereby ordered as follows:

Section 1. *Policy.* Robust monitoring and enforcement of U.S. rights under international trade agreements, and enforcement of domestic trade laws, are crucial to expanding exports and ensuring U.S. workers, businesses, ranchers, and farmers are able to compete on a level playing field with foreign trade partners. To strengthen our capacity to monitor and enforce U.S. trade rights and domestic trade laws, and thereby enhance market access for U.S. exporters, executive departments and agencies (agencies) must coordinate and augment their efforts to identify and reduce or eliminate foreign trade barriers and unfair foreign trade practices to ensure that U.S. workers, businesses, ranchers, and farmers receive the maximum benefit from our international trade agreements and under domestic trade laws.

Sec. 2. *Establishment.* (a) There is established within the Office of the United States Trade Representative (USTR) an Interagency Trade Enforcement Center (Center).

(b) The Center shall coordinate matters relating to enforcement of U.S. trade rights under international trade agreements and enforcement of domestic trade laws among USTR and the following agencies:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Justice;

(iv) the Department of Agriculture;

(v) the Department of Commerce;

(vi) the Department of Homeland Security;

(vii) the Office of the Director of National Intelligence; and

(viii) other agencies as the President, or the United States Trade Representative, may designate.

In matters relating to the enforcement of U.S. trade rights involving intellectual property rights, the Center shall consult with the Intellectual Property Enforcement Coordinator.

(c) The Center shall have a Director, who shall be a full-time senior-level official of USTR, designated by and reporting to the United States Trade Representative. The Center shall have a Deputy Director, who shall be a full-time senior-level official of the Department of Commerce, designated by the Secretary of Commerce, detailed to the Center and reporting to the Director. The Center shall also have an Intelligence Community Liaison, who shall be a full-time senior-level official of the Federal Government recommended by the Director of National Intelligence and designated by his or her agency, as applicable, to be detailed or assigned to the Center.

(d) To the extent permitted by law and subject to the availability of appropriations, and in consultation with the Director of the Center, agencies

enumerated in subsection (b) of this section, and others in the Intelligence Community recommended by the Director of National Intelligence, are encouraged to detail or assign their employees to the Center without reimbursement to support the mission and functions of the Center as described in section 3 of this order.

Sec. 3. *Mission and Functions.* The Center shall:

(a) serve as the primary forum within the Federal Government for USTR and other agencies to coordinate enforcement of U.S. trade rights under international trade agreements and enforcement of domestic trade laws;

(b) coordinate among USTR, other agencies with trade related responsibilities, and the U.S. Intelligence Community the exchange of information related to potential violations of international trade agreements by our foreign trade partners; and

(c) conduct outreach to U.S. workers, businesses, and other interested persons to foster greater participation in the identification and reduction or elimination of foreign trade barriers and unfair foreign trade practices.

Sec. 4. *Administration.* (a) Funding and administrative support for the Center shall be provided by USTR to the extent permitted by law and subject to the availability of appropriations.

(b) The United States Trade Representative, through the Director of the Center, shall direct the work of the Center in performing all of its functions under this order.

Sec. 5. *Definitions.* For the purposes of this order:

(a) the term ''U.S. trade rights'' means any right, benefit or advantage to which the United States is entitled under an international trade agreement and that could be effectuated through the use of a dispute settlement proceeding.

(b) the term ''domestic trade laws'' means any trade remedies available under U.S. law, including, but not limited to, sections 201, 301, 406, and 421 of the Trade Act of 1974, as amended (19 U.S.C. 2251, 2411, 2436, and 2451); sections 332 and 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1332 and 1337); section 281 of the Uruguay Round Agreements Act (19 U.S.C. 3571); and self-initiation of investigations under Title VII of the Tariff Act of 1930 (19 U.S.C. 1671).

Sec. 6. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law, regulation, Executive Order, or Presidential Directive to an executive department, agency, or head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) 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.

THE WHITE HOUSE,
February 28, 2012.

[FR Doc. 2012–5366
Filed 3–2–12; 8:45 am]
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Presidential Documents

Memorandum of February 28, 2012

Proposed Revised Habitat for the Spotted Owl: Minimizing Regulatory Burdens

Memorandum for the Secretary of the Interior

Today, compelled by court order, the Department of the Interior (Department) proposed critical habitat for the northern spotted owl. The proposal is an initial step in gathering important information that will inform a final decision on what areas should be designated as critical habitat for the spotted owl, based on a full evaluation of all key criteria: the relevant science, economic considerations, the impact on national security, and a balancing of other factors.

Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), explicitly states that our ''regulatory system must protect public health, welfare, safety, and our environment while *promoting economic growth, innovation, competitiveness, and job creation*'' (emphasis added). Consistent with this mandate, Executive Order 13563 requires agencies to tailor ''regulations to impose *the least burden on society*, consistent with obtaining regulatory objectives'' (emphasis added). Executive Order 13563 also requires agencies to ''identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice'' while selecting ''those approaches that maximize net benefits.'' To the extent permitted by law, our regulatory system must respect these requirements.

The Endangered Species Act (ESA) states: ''[t]he Secretary shall designate critical habitat . . . on the basis of the best scientific data available and *after taking into consideration the economic impact*, the impact on national security, and *any other relevant impact*, of specifying any particular area as critical habitat'' (emphasis added). 16 U.S.C. 1533(b). The ESA also provides that ''[t]he Secretary may *exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat*, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned'' (emphasis added). Id. Under the ESA, scientific, economic, and other considerations are relevant to critical habitat designations. Under a regulation issued by the Department in 1984, however, the economic analysis follows the scientific assessment, rather than being presented simultaneously with it; one of the purposes of this memorandum is to direct you to propose revisions to that regulation.

Consistent with the ESA and Executive Order 13563, today's proposed rule emphasizes the importance of flexibility and pragmatism. The proposed rule notes the need to consider ''the economic impact'' of the proposed rule, outlines a series of potential exclusions from the proposed critical habitat, and asks for public comments on those exclusions and on other possible exclusions. Private lands and State lands are among the potential exclusions, based on a recognition that habitat typically is best protected when landowners are working cooperatively to promote forest health, and a recognition—as discussed in the proposed rule—that the benefits of excluding private lands and State lands may be greater than the benefits of including those areas in critical habitat.

Importantly, the proposed rule recommends, on the basis of extensive scientific analysis, that areas identified as critical habitat should be subject to active management, including logging, in order to produce the variety of stands of trees required for healthy forests. The proposal rejects the traditional view that land managers should take a ''hands off'' approach to forest habitat in order to promote species health; on-going logging activity may be needed to enhance forest resilience.

In order to avoid unnecessary costs and burdens and to advance the principles of Executive Order 13563, consistent with the ESA, I hereby direct you to take the following actions:

(1) publish, within 90 days of the date of this memorandum, a full analysis of the economic impacts of the proposed rule, including job impacts, and make that analysis available for public comment;

(2) consider excluding private lands and State lands from the final revised critical habitat, consistent with applicable law and science;

(3) develop clear direction, as part of the final rule, for evaluating logging activity in areas of critical habitat, in accordance with the scientific principles of active forestry management and to the extent permitted by law;

(4) carefully consider all public comments on the relevant science and economics, including those comments that suggest potential methods for minimizing regulatory burdens;

(5) give careful consideration to providing the maximum exclusion from the final revised critical habitat, consistent with applicable law and science; and

(6) to the extent permitted by law, adopt the least burdensome means, including avoidance of unnecessary burdens on States, tribes, localities, and the private sector, of promoting compliance with the ESA, considering the range of innovative ecosystem management tools available to the Department and landowners.

Executive Order 13563 states that our regulatory system ''must promote predictability and reduce uncertainty.'' Uncertainty on the part of the public may be avoided, and public comment improved, by simultaneous presentation of the best scientific data available and the analysis of economic and other impacts. Accordingly, in order to provide more complete information in the future regarding potential economic impacts when critical habitat proposals are first offered to the public, I direct you to take prompt steps to propose revisions to the current rule (which, as noted, was promulgated in 1984 and requires that an economic analysis be completed *after* critical habitat has been proposed) to provide that the economic analysis be completed and made available for public comment at the time of publication of a proposed rule to designate critical habitat.

This memorandum 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.

You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, February 28, 2012

[FR Doc. 2012–5369
Filed 3–2–12; 8:45 am]
Billing code 4310–10–P

Rules and Regulations

Federal Register
Vol. 77, No. 43
Monday, March 5, 2012

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0997; Directorate Identifier 2011–NM–043–AD; Amendment 39–16963; AD 2012–04–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200 series airplanes; Model A330–300 series airplanes; Model A340–200 series airplanes; and Model A340–300 series airplanes. This AD was prompted by a report that three failures of the retraction bracket occurred during fatigue testing before the calculated life limit of the main landing gear (MLG). This AD requires repetitive replacement of the affected retraction bracket of the MLG. We are issuing this AD to prevent failure of the retraction bracket, which could result in a MLG extension with no damping, and consequent structural damage of the MLG.

DATES: This AD becomes effective April 9, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 5, 2011 (76 FR 61645). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During fatigue testing of the MLG [main landing gear], three failures of the retraction bracket occurred before the calculated life limitation. Further analysis has confirmed that those failures were due to fatigue initiated by fretting between the bush and lug bore.
>
> The failure of the retraction bracket, if not detected, could lead to a MLG extension with no damping resulting in MLG structural damage.
>
> Airbus carried out an investigation, demonstrating that the life limit of retraction brackets must be reduced to 19,800 Landings (LDG), which is below the life limit stated in the following A330 and A340 Airbus ALS Part 4 revisions:
>
> —Airbus A330 ALS Part 4 revision 02 approved by EASA on 16 December 2009.
>
> —Airbus A340 ALS Part 4 revision 01 approved by EASA on 15 December 2009.
>
> In order to maintain the structural integrity of the aeroplane, this [EASA] AD requires the replacement of these MLG retraction brackets before the accumulation of 19,800 total LDG.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 61645, October 5, 2011) or on the determination of the cost to the public.

Explanation of Change Made to This AD

We have re-designated Notes 1 and 2 of the NPRM (76 FR 61645, October 5, 2011) as paragraph (h) in this final rule, and re-identified subsequent paragraphs accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 61645, October 5, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 61645, October 5, 2011).

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

Costs of Compliance

We estimate that this AD will affect 29 products of U.S. registry. We also estimate that it will take about 25 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $200,000 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,861,625, or $202,125 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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.

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

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 the NPRM (76 FR 61645, October 5, 2011), 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–04–07 Airbus: Amendment 39–16963. Docket No. FAA–2011–0997; Directorate Identifier 2011–NM–043–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 9, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category, all manufacturer serial numbers; except airplanes on which Airbus modification 54500 has been embodied in production; and except airplanes on which Airbus Service Bulletin A330–32–3212 or Airbus Service Bulletin A340–32–4256 has been embodied in service; as applicable to airplane model.

(d) Subject

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

(e) Reason

This AD was prompted by a report that three failures of the retraction bracket occurred during fatigue testing before the calculated life limit of the main landing gear (MLG). We are issuing this AD to prevent failure of the retraction bracket, which could result in a MLG extension with no damping, and consequent structural damage of the MLG.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Replacement

Before the accumulation of 19,800 total landings on the retraction brackets of the MLG or within 900 flight hours after the effective date of this AD, whichever occurs later: Replace the affected retraction bracket of the MLG specified in table 1 of this AD with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, or European Aviation Safety Agency (EASA) (or its delegated agent). Thereafter, before the accumulation of 19,800 total landings on any retraction bracket of the MLG identified in table 1 of this AD, replace the retraction bracket with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, or EASA (or its delegated

TABLE 1—RETRACTION BRACKET OF THE MLG

Nomenclature	Part No.
Retraction Bracket of the MLG	201478303
	201478304
	201478305
	201478306
	201478307
	201478308
	201428380
	201428381
	201428382
	201428383
	201428384
	201428385
	201428378
	201428379
	201428351
	201428352

Note 1 to paragraph (g) of this AD: Additional guidance for the replacement can be found in Task 32–11–11–000–804–A, Removal of the MLG Retraction Bracket Assembly, and Task 32–11–11–400–804–A, Installation of the MLG Retraction Bracket Assembly, of Subsection 32–11–11 of Chapter 32 of the Airbus A330 or A340 Aircraft Maintenance Manual, as applicable.

(h) Definitions

(1) For purposes of this AD, ''total landings'' is defined as the accumulated landings since the initial entry of the MLG retraction bracket into service on any airplane.

(2) For purposes of this AD, the initial entry into service for the transferable systems components/items is defined as the date at which the component/item accomplishes the first flight for which it will undertake its intended function.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

(1) Refer to MCAI Airworthiness Directive EASA AD 2010–0205, dated October 8, 2010, for related information.

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

(k) Material Incorporated by Reference

None.

Issued in Renton, Washington, on February 14, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4498 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1420; Directorate Identifier 2011–CE–035–AD; Amendment 39–16905; AD 2011–27–04]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Airplanes Equipped With a Certain Supplemental Type Certificate (STC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all Hawker Beechcraft Corporation Models 95–C55, D55, E55, 58, and 58A airplanes equipped with a certain STC. The description of the affected STCs in the first sentence of the **SUPPLEMENTARY INFORMATION**, Discussion section, is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective March 5, 2012. The effective date for AD 2011–27–04 (76 FR 81790, December 29, 2011) remains December 29, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric B. Potter, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5583; fax: (404) 474–5606; email: *eric.potter@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2011–27–04, amendment 39–16905 (76 FR 81790, December 29, 2011), currently requires assuring the airspeed indicator(s) and/or airspeed limitations placard(s) have the correct minimum control speed (V_{MC}) markings for all Hawker Beechcraft Corporation Models 95–C55, D55, E55, 58, and 58A airplanes equipped with a certain STC.

As published, the description of the affected STCs in the first sentence of the **SUPPLEMENTARY INFORMATION**, Discussion section, is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the preamble to the final rule is being published in the **Federal Register**.

The effective date of this AD remains December 29, 2011.

Correction of Non-Regulatory Text

In the **Federal Register** of December 29, 2011, AD 2011–27–04; Amendment 39–16905 is corrected as follows:

On page 81790, in the third column, on line 2 under the heading **SUPPLEMENTARY INFORMATION**, Discussion, correct ‘‘, we found that STC SA1762SO (installation of vortex generators) and STC SA4016NM (Foxstar Baron modification of winglets and different engines and propellers) were installed.’’ to read ‘‘, we found that STC SA1762SO (Foxstar Baron modification of winglets and different engines and propellers) and STC SA4016NM (installation of vortex generators) were installed.’’

Issued in Kansas City, Missouri, on February 23, 2012.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–5290 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0588; Directorate Identifier 2010–SW–074–AD; Amendment 39–16717; AD 2011–12–10]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register.** That AD applies to Robinson Helicopter Company (Robinson) Model R22, R22 Alpha, R22 Beta, R22 Mariner, R44, and R44 II helicopters. The paragraph reference in paragraph (b) of the Compliance section is incorrect. Paragraph (b) references paragraph (d), when it should reference paragraph (c). This document corrects that error. Additionally, the word ‘‘inspection’’ has been added in paragraph (b) for clarification. In all other respects, the original document remains the same.

DATES: The effective date of this final rule is March 5, 2012. The effective date for AD 2011–12–10 remains July 5, 2011.

Examining the AD Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric D. Schrieber, Aerospace Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5348; email *eric.schrieber@faa.gov* (regarding Model R22 helicopters); or Fred Guerin, Aerospace Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5232; email *fred.guerin@faa.gov* (regarding Model R44 helicopters).

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2011–12–10, Amendment 39–16717 (76 FR 35330, June 17, 2011), currently includes the following paragraph (b) in the compliance section:

‘‘(b) If you find any bare metal in the area of the skin-to-spar bond line, before further flight, inspect the blade by following the requirements of paragraph (d) of this AD.’’

As published, the reference to paragraph (d) is incorrect. The correct reference is to paragraph (c). Paragraph (c) contains the inspection requirements, and the incorrect

reference to paragraph (d) is confusing. We have also added the word ''inspection'' to clarify that the requirements we are referring to are the inspection requirements, not the compliance times.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register.**

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of June 17, 2011, on page 35333 in the second column, paragraph (b) of AD 2011–12–10 is corrected to read as follows:

* * * * *

(b) If you find any bare metal in the area of the skin-to-spar bond line, before further flight, inspect the blade by following the inspection requirements of paragraph (c) of this AD.

* * * * *

Issued in Fort Worth, Texas, on January 3, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–4604 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0556; Airspace Docket No. 11–ASO–21]

Amendment of Class E Airspace; Jacksonville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class E airspace at Albert J. Ellis Airport, Jacksonville, NC, by updating the geographic coordinates of the airport to aid in the navigation of our National Airspace System. The airport dimensions and operating procedures remain the same.

DATES: *Effective date:* 0901 UTC. April 5, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

The FAA received a request from the National Aeronautical Navigation Services to update the geographic coordinates of Albert J. Ellis Airport, Jacksonville, NC. This action makes the adjustment.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, at Albert J. Ellis Airport, Jacksonville, NC. The geographic coordinates of the airport are adjusted to be in concert with the FAA aeronautical database. Accordingly, since this is an administrative change, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Class E airspace designations are published in Paragraphs 6002 and 6005, respectively of FAA order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A. Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Jacksonville, NC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASO NC E2 Jacksonville Albert J. Ellis Airport, NC [Amended]

Jacksonville, Albert J. Ellis Airport, NC
(Lat. 34°49′45″ N., long. 77°36′44″ W.)

Within a 4.2-mile radius of Albert J. Ellis Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ASO NC E5 Jacksonville, NC [Amended]

Jacksonville, New River MCAS, NC
(Lat. 34°42′30″ N., long. 77°26′23″ W.)
Albert J. Ellis Airport
(Lat. 34°49′45″ N., long. 77°36′44″ W.)
Onslow Memorial Hospital Point In Space Coordinates
(Lat. 34°45′36″ N., long. 77°22′28″ W.)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of New River MCAS, and within a 6.7-mile radius of Albert J. Ellis Airport, and within a 6-mile radius of the point in space (lat. 34°45′36″ N., long. 77°22′28″ W.) serving Onslow Memorial Hospital.

Issued in College Park, Georgia, on February 24, 2012.

Barry A. Knight,

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

[FR Doc. 2012–5126 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS MICHAEL MURPHY (DDG 112) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective March 5, 2012 and is applicable beginning February 22, 2012.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS MICHAEL MURPHY (DDG 112) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Rule 21(a), pertaining to the arc of visibility of the forward masthead light; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Four, Paragraph 15 by adding, in alpha numerical order, by vessel number, an entry for USS MICHAEL MURPHY (DDG 112);

■ B. In Table Four, Paragraph 16 by adding, in alpha numerical order, by vessel number, an entry for USS MICHAEL MURPHY (DDG 112); and

■ C. In Table Five, by adding, in alpha numerical order, by vessel number, an entry for USS MICHAEL MURPHY (DDG 112):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FOUR

15. * * *

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * * * *		
USS MICHAEL MURPHY	DDG 112	1.90 meters
* * * * * * *		

16. * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * * * *		
USS MICHAEL MURPHY	DDG 112	109.60 THRU 112.50 [degrees]
* * * * * * *		

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * * * * * *					
USS MICHAEL MURPHY	DDG 112	X	X	X	14.5
* * * * * * *					

Approved: February 22, 2012.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–5090 Filed 3–2–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0069]

RIN 1625–AA00

Safety Zone for Margate Bridge, Intracoastal Waterway; Margate, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within the Intracoastal Waterway near Margate, NJ. This safety zone is necessary to ensure safety while the Margate Bridge undergoes repairs, specifically a high priority fender system replacement. The safety zone is intended to restrict vessel traffic movement on the west side of the channel to protect mariners from the hazards associated with the operation.

DATES: This rule is effective in the CFR on March 5, 2012 through 5:30 p.m. on March 16, 2012. This rule is effective with actual notice for purposes of enforcement at 7 a.m. on February 6, 2012, through 5:30 p.m. on March 16, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0069 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0069 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 temporary rule, call or email Lieutenant Corrina Ott, U.S. Coast Guard, Sector Delaware Bay, Chief of Waterways Management Division, Coast Guard; telephone 215–271–4902, email *Corrina.ott@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 temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. It is impracticable to publish an NPRM because the Margate Bridge Company gave short notice to the Coast Guard. Furthermore, delay is contrary to the public interest because of the need for protection of the maritime public and vehicular traffic from the hazards involved with the deteriorating fender system of the bridge. Furthermore, publishing an NPRM is unnecessary because only one side of the channel will be closed, allowing marine access through the eastern side of the channel.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to provide for the safety of life and property from the hazards associated with the work involved to repair the fender system. It is impracticable to publish an NPRM because the fender system work is a high priority, aimed at protecting both marine and vehicular traffic. Furthermore, delay is contrary to the public interest because of the need for protection of the public from the hazards involved with the work associated with repairing the fender system.

Background and Purpose

The Margate Bridge Company is conducting operations to repair the fender system on the Margate Bridge over the Intracoastal Waterway. As part of the operations, a barge will be stationed in the vicinity of the Margate Bridge, anchored on the west side of the Channel. The barge will have the new fender system constructed on it. The work to repair the fender system is expected to last six weeks, from 7 a.m. on February 6, 2012 through 5:30 p.m. on March 16, 2012.

The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

Discussion of Rule

The Coast Guard Captain of the Port Delaware Bay is establishing a temporary safety zone beginning at 7 a.m. on February 6, 2012 through 5:30 p.m. on March 16, 2012. The boundary line for the temporary safety zone starts at position 39 20′19″ N, 074 30′53″ W east to 39 20′19″ N, 074 30′46″ W south to 39 20′10″ N, 074 30′49″ W west to 39 20′10″ N, 074 30′57″ W and north to 39 20′19″ N, 074 30′53″ W. Vessels will not be permitted to transit through the safety zone unless they receive authorization from the Captain of the Port Delaware Bay or her representative. Such requests must be made one hour prior to the intended transit of the Safety Zone. Vessels may contact the Captain of the Port Delaware Bay or her representative in order to obtain authorization by contacting Sector Delaware Bay at (215) 271–4940. Vessels will be allowed to transit through the eastern portion of the channel while the repairs are on-going as this safety zone is intended to cover only the western portion of the channel.

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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to transit through the safety zone with the permission of the Captain of the Port on a case-by-case basis; and (iii) the eastern portion of the channel will remain open, allowing vessel traffic to transit through that portion while the repairs are ongoing.

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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operator of the vessels intending to transit the western portion of the Intracoastal Waterway at or near Margate Bridge on February 6, 2012 until March 16, 2012 from 7 a.m. until 5:30 p.m. Monday through Saturday.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The eastern portion of the channel will remain open and accessible to marine traffic to pass safely around the zone and vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or her representative. Sector Delaware Bay will issue maritime advisories widely accessible to users of the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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 (adjust for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect 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 does not create an environmental risk to health or risk to safety that may 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 guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves implementation of regulations within 33 CFR part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessel traffic from transiting through a portion of the river in order to protect the safety of life and property on the waters. Under figure 2–1, paragraph (34)(g) 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 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary 165.T05–0096, to read as follows:

§ 165.T05–0096 Safety Zone for Margate Bridge, Intracoastal Waterway; Margate, NJ.

(a) *Location.* The boundary line for the temporary safety zone starts at position 39°20′19″ N, 074°30′53″ W east to 39°20′19″ N, 074°30′46″ W south to 39°20′10″ N, 074°30′49″ W west to 39°20′10″ N, 074°30′57″ W and north to 39°20′19″ N, 074°30′53″ W.

(b) *Enforcement period.* This rule is effective from February 6, 2012 until March 16, 2012, from 7 a.m. until 5:30 p.m.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.33 of this part.

(1) All persons and vessels transiting through the Safety Zone must be authorized by the Captain of the Port or her representative.

(2) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her representative one hour prior to the intended time of transit.

(3) Vessels granted permission to transit must do so in accordance with the directions provided by the Captain of the Port or her representative to the vessel.

(4) To seek permission to transit the Safety Zone, the Captain of the Port or her representative can be contacted via Sector Delaware Bay Command Center (215) 271–4940.

(5) This section applies to all vessels wishing to transit through the Safety Zone except vessels that are engaged in the following operations: (i) Enforcing laws; (ii) servicing aids to navigation, and (iii) emergency response vessels.

(6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) The Captain of the Port may take possession and control of any vessel in the safety zone;

(9) The Captain of the Port may remove any person, vessel, article, or thing from a safety zone;

(10) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(11) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(d) *Definitions.* (1) The Captain of the Port means the Commanding Officer of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on her behalf.

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

Dated: February 3, 2012.

Todd C. Wiemers,

Captain, U.S. Coast Guard, Alternate Captain of the Port Delaware Bay.

[FR Doc. 2012–5204 Filed 3–2–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AN42

Drug and Drug-Related Supply Promotion by Pharmaceutical Company Representatives at VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations regarding access to VA facilities by pharmaceutical company representatives. The purposes of the rule are to reduce or eliminate any potential for disruption in the patient care environment, manage activities and promotions at VA facilities, and provide pharmaceutical company representatives with a consistent standard of permissible business practice at VA facilities. The amendments will facilitate mutually beneficial relationships between VA and pharmaceutical company representatives.

DATES: *Effective Date:* This final rule is effective April 4, 2012.

FOR FURTHER INFORMATION CONTACT: Louis E. Cobuzzi, PBM Services (119), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461–7362. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 303, the Secretary of Veterans Affairs is responsible for ''the proper execution and administration of all laws administered by the Department and for the control, direction, and management of the Department.'' The Secretary has authority to prescribe all rules necessary to carry out the laws administered by the Department, such as section 303 regarding control and management of the Department. *See* 38 U.S.C. 501(a). VA has implemented this authority, as it pertains to management of VA facilities, in 38 CFR part 1.

VA amends 38 CFR part 1 to regulate access to VA medical facilities by pharmaceutical company representatives promoting drugs and drug-related supplies. Currently, many policies regarding access to VA facilities are established and maintained at the local level, either by Veterans Integrated Service Network (VISN) leaders or by administrators at particular facilities. A VISN, which we define in § 1.220(b), is a network of VA medical facilities located in a particular region. There are 21 such regions, and the areas that they service can be found at *http://www.vacareers.va.gov/networks.cfmm.* On May 11, 2010, we proposed VA-wide rules that would be followed at the VISN and local levels.

We received five comments on the proposed rule. Although we make a few modifications based on these comments and some organizational changes for improved clarity, we otherwise adopt the rule as proposed for the reasons discussed in the May 11, 2010, notice. A detailed consideration of the comments follows.

Requests for New Definitions

In response to the comments concerning the scope of § 1.220 as a whole, we have added a ''Scope'' paragraph, designated as paragraph (a), that states: ''This rule governs on-site, in-person promotional activities, including educational activities, by pharmaceutical company representatives at VA medical facilities. It does not apply to the distribution of information and materials through other means.'' This note clarifies that the rule governs only physical access to VA medical facilities and that information and materials can be distributed through other means than in-person at a VA medical facility. Consistent with this clarification of the scope of the rule, we have revised the heading of § 1.220 to ''On-site activities by pharmaceutical company representatives at VA medical facilities.'' Because we inserted a new paragraph (a) and made other organizational changes to the rule, the paragraph designations used in the proposed rule have changed. Throughout this rulemaking we cite to both the proposed rule paragraph designation and the final rule paragraph designation.

We note that we have made a technical revision to correctly refer to the ''official National Formulary.'' The proposed rule had referred to the ''official National Formulary of the United States,'' which is not the correct title of the National Formulary.

A commenter stated that the proposed rule does not clearly define ''educational programs and materials.'' The commenter stated that proposed paragraph (d) ''appears to apply to programmed events with an educational, rather than promotional, purpose * * * and the materials associated with such events.'' To clarify the applicability of proposed paragraph (d), now designated as paragraph (f), we have added the following: ''An educational program is a pre-scheduled event or meeting during which a pharmaceutical company representative provides information about a drug or drug-related supply.'' We have also modified the word ''materials'' where it appears in paragraph (f) with the word ''associated'' to make clear that the materials discussed in paragraph (f) are those materials intended for use in connection with an educational program. We note that this definition applies only to this section and does not apply to the similar terms as used by other U.S. Government agencies, such as the Food and Drug Administration (FDA), in their regulations or guidances.

The commenter also argued that proposed paragraph (d), now designated as paragraph (f), may be susceptible to a broad interpretation that would cover ''most promotional materials,'' such as documents that instruct patients on how to take their medication or educate physicians about the side-effects associated with particular medications. This commenter, as well as others, appears to be concerned with the general breadth and scope of proposed paragraph (d), and we agree that these can be clarified. The purpose of proposed paragraph (d) was to monitor materials distributed on VA grounds in connection with an educational program. As explained in the proposed rule, we have concerns that a VA patient will obtain such materials and misinterpret them, which could interfere with that patient's clinical course of treatment. As explained above, we revised the rule so that this paragraph clearly applies to educational programs and the materials associated therewith. On-site distribution of materials outside the context of an educational program is addressed in paragraph (h)(6) of the final rule, as discussed later in this rulemaking.

One commenter suggested that VA delete proposed paragraph (d) entirely because there is insufficient clarity about what constitutes ''programs,'' noting that the rule could restrict the provision of educational materials mandated by the FDA. To address this comment, we have explicitly stated in current paragraph (f) that ''[t]he approval authority will deem suitable any educational program and associated materials if it is part of a risk evaluation and mitigation strategy or other duty imposed by the Food and Drug Administration.'' However, we note that even such educational programs must be submitted to the approval authority for review to ensure appropriate scheduling and that such educational program is indeed an obligation imposed by the FDA. We also note, as explained later in this preamble, that the required notice for an educational program may be given on a shortened basis in certain cases.

Also related to proposed paragraph (d), commenters requested that VA define ''summary of the program and all materials'' and ''well in advance of the proposed date.'' VA's intent is to require that all educational programs and associated materials be submitted, and the inclusion of the word ''summary'' caused confusion in this regard, so we removed the word ''summary'' from the paragraph. For ''well in advance of the proposed date,'' we have changed the phrase in current paragraph (f) to read: ''at least 60 days before the proposed date of the educational program or distribution of associated materials, unless VA agrees in an individual case to a different date.'' We believe that this gives VA adequate notice, while allowing for flexibility in cases where the pharmaceutical company cannot provide 60 days advance notice and VA agrees that, in a particular case, we do not need the full 60 days to review the materials.

A commenter requested that VA define ''non-promotable,'' as used in proposed paragraph (b)(2), because the word could be interpreted subjectively, and therefore may not be applied consistently in the field. Commenters also requested that VA publish a list of non-promotable drugs. We agree that it will be useful to pharmaceutical company representatives to provide information about where to find a list of such drugs. Thus, we define non-promotable drugs as ''drugs designated by VA as non-promotable'' and inform the public that a list of such drugs will be available upon request or on VA's Web site at *http://www.pbm.va.gov*. We have also removed the following sentence from proposed paragraph (b)(2), now designated paragraph (c)(3): ''A list of the drugs or drug-related supplies classified by VA as non-promotable is available at *www.pbm.va.gov*, or may be requested by contacting the local office of the Chief of Pharmacy Services.'' This sentence is no longer necessary because virtually identical language has been used in the definition for non-promotable drugs.

We disagree with additional comments suggesting that VA should develop a mechanism that allows pharmaceutical manufacturers to participate in the determination of whether a drug is non-promotable. We reject the commenters' suggestions in order to maintain the safety of our patients, and so that we can continue to make quick, important clinical responses to scientific and medical developments related to pharmaceutical products. VA must independently determine which drugs to designate as non-promotable. In determining whether a drug is non-promotable, VA considers many factors, including price, a determination that a certain drug has no clinical benefit, or a finding that promotional materials exceed the clinically determined specific use of a drug—such as when VA makes a clinical decision to utilize a drug for a narrow purpose. For example, there may be a drug or new molecular entity that does not appear on the VA National Formulary (VANF), which VA uses to treat patients for diseases that VA would otherwise be unable to treat. In such instances, VA must continue to maintain strict adherence to its criteria-for-use and prevent undesired promotion of a drug. Therefore, VA must be able to designate a drug as non-promotable in order to enforce any attempt by pharmaceutical company representatives to systematically promote the use of a certain drug for uses outside of those sanctioned by VA. Finally, we note that VA will rarely, if ever, classify a drug as non-promotable. In fact, we currently do not have any drugs classified as non-promotable, as reflected on our Web site at *http://www.pbm.va.gov.*

Commenters suggested that VA define ''facility initiative,'' as used in proposed paragraph (b)(4). We understand that this term may create some confusion, and rather than define the term, we have revised the regulation text so that it no longer uses that term and instead fully explains the requirements. Specifically, in new paragraph (c)(2), we clarify the meaning of the requirements that we set forth in proposed paragraphs (b)(3) and (4). We require that the promotions must have ''significant educational value and must not inappropriately divert VA staff from other activities that VA staff would otherwise perform during duty hours, including patient care and other educational activities.'' This language accurately clarifies intent of the previous ''facility initiatives'' language. We reject an additional request that VA identify the decision-maker who determines whether these requirements for promotion are met under the rule. VA respects the need for its various facilities to be permitted to initiate creative responses to the needs of their specific patient population, as well as surrounding communities. Moreover, different facilities will have different management resources available to make these determinations. We will continue to allow each facility to delegate to the appropriate staff member to make this determination.

Commenters recommended that VA define ''promote'' or ''promotion'' in order to clarify that safety discussions and scientific exchanges are not included in the rule. Commenters also suggested that we clarify whether medical or clinical liaisons are specifically excluded from being considered promoters. We understand that employees of pharmaceutical companies attempting to visit VA facilities work in different capacities and possess varying levels of expertise. We also understand that this could lead to confusion about application of the rule. We clarify this issue by defining a

''pharmaceutical company representative'' as ''any individual employed by or contracted to represent a pharmaceutical manufacturer or retailer.'' By defining pharmaceutical company representative broadly, we remove any ambiguity as to whether an employee of a pharmaceutical company, contracted or otherwise, should follow the procedures set out in this rule. Clinical liaisons may freely discuss the benefits of a medication manufactured or sold by their employer simply by following the requirements set out under this rule. We also note again that pharmaceutical company representatives are free to provide safety and scientific information through means other than on-site, in-person, visits to VA facilities.

Commenters suggested that VA define the terms ''manufacturer sponsored program,'' ''promotional materials,'' ''patient education materials,'' and ''individual departments.'' We disagree with the commenters' suggestions because the meaning of each of these terms is clear in the context of the rule. They are accepted terms of art in the industry that are well understood by pharmaceutical company representatives and VA staff. Commenters also suggested that VA define the term ''marketing activities'' as used in proposed paragraph (d)(2). We have decided to remove this paragraph referencing ''marketing activities'' because we believe that the requirements for educational program and associated materials are adequately described in the rest of proposed paragraph (d), now designated paragraph (f).

Requests for Modifications to Proposed Definitions

Commenters suggested that VA modify the definition of ''drugs'' to clarify the meaning of chemicals, the impact on drugs used for medical research, the basis for decisions based on drugs, and who that decision-maker will be. To address these comments, we have decided to adopt the definition of ''drug'' used in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*). We modified the definition only to remove internal cross-references. By doing so, we hope to eliminate the confusion expressed by the commenters. As we stated in the preamble to the proposed rule, we intend the term ''drug'' ''to be inclusive of all items typically promoted by pharmaceutical sales representatives,'' and thus have adopted the definition used by Congress in the Federal Food, Drug, and Cosmetic Act. We note that nothing in this regulation is intended to conflict with FDA's regulation regarding the promotion of investigational new drugs, *see* 21 CFR 312.7.

Several commenters recommended modifications to the definition of ''drug-related supplies'' because they assert that it is unclear whether VA intends to include medical devices in this definition. We believe that the term as defined properly and clearly covers those devices required to use a given drug in accordance with the prescribed use, but we have added as examples of such supplies inhalers, spacers, insulin syringes, and tablet splitters. These devices are generally given out by VA pharmacies in our patient setting, as opposed to other offices within VA facilities.

One commenter stated that including test strips and testing devices is not justified because the rule is ''aimed at promotion of particular pharmaceuticals and pharmaceutical representatives.'' Whether a representative is promoting a drug or a testing device associated with a drug, it is important that VA be able to limit the effects of such promotion on patient care. Again, we make no changes based on these comments.

Several commenters also requested clarification of the definition of ''criteria-for-use.'' One commenter suggested that VA adjust the definition to require compliance only with VA's national criteria-for-use standards, and do away with the authorization of exceptions at the local level. We disagree with these suggestions and will continue to provide local VA facilities the ability to make necessary decisions that are in the best interest of their patients with regard to criteria-for-use, based on geographic or other factors specific to the patient population at each VA facility. We also clarify that this rulemaking does not alter the well-established practice for learning about national and local criteria-for-use and the VANF. At the local level, pharmaceutical company representatives will continue to request criteria-for-use from the appropriate VA employee at the appropriate VISN Office, or the Office of the Chief of Pharmacy Services. We further note, in response to comments regarding mature brands, that all national criteria-for-use requirements are listed on VA's Web site.

One commenter suggested that VA exclude medical residents from being considered ''health professional students'' under proposed paragraph (f)(5), now designated paragraph (h)(3), because residents have prescribing power and therefore should receive drug information. We reject this suggestion because we believe that it would be inappropriate to allow, as a general rule, drug marketing to target health professional students who are still in training. Such marketing is designed to promote the sale of a particular product, and not to educate health professionals about a variety of pharmaceutical products. In addition, under the rule, VA has the flexibility to allow all trainees including residents to receive marketing information at the discretion of the VA staff member providing clinical supervision. In this regard, we changed the language in paragraph (h)(3) to ''the staff member providing clinical supervision'' rather than simply ''clinical staff member.'' We believe this revision adds clarity.

Finally, we note that we are changing a reference used in the definition for ''VA National Formulary (VANF) drugs and/or drug-related supplies.'' We are changing ''local office of the Chief of Pharmacy Services'' to the ''VA medical facility's Chief of Pharmacy Services.'' This is simply a technical edit that makes this clause consistent with the language added in definitions discussed above, and provides more clarity to the public. We make a similar change to proposed paragraphs (e)(1), now designated paragraph (g)(1)) and proposed paragraph (f)(2), now designated paragraph (h)(1). Specifically, we change references to ''local policies'' and ''local office of the Chief of Pharmacy Services'' to ''medical center policy'' and ''VA medical facility office of the Chief of Pharmacy Services.''

Requests for Clarification

For clarity, we have restructured the content of proposed paragraphs (b) and (c) regarding the basic requirements for promotion, into newly designated paragraphs (c), (d), and (e). The proposed rule addressed the requirements for promotion in terms of three categories of drugs and drug-related supplies: (1) VANF drugs and drug-related supplies, and non-VANF drugs and drug related supplies with criteria-for-use; (2) non-VANF drugs and drug-related supplies without criteria-for-use; and (3) new molecular entities. This final rule continues to address drugs and drug-related supplies in terms of these three categories, however, to make the requirements associated with each of these three categories of drugs or drug-related supplies more clear, we have broken the rule out into separate paragraphs addressing each category of drug or drug-related supply. The substance of these sections remains virtually the same with organizational changes for clarity. Paragraph (c) provides the requirements for

promotion of VANF drugs and drug-related supplies, and non-VANF drugs and drug related supplies with criteria-for-use. Paragraph (d) provides the requirements for promotion of non-VANF drugs and drug-related supplies without criteria-for-use, which include an approval requirement on top of the three requirements under paragraph (c). Similarly, paragraph (e) provides the requirements for promotion of new molecular entities, which include an approval requirement on top of the requirements found under paragraph (c).

One consistent concern expressed by the commenters was the relationship between this rule and laws administered by the FDA. As explained throughout this rulemaking, we have made clarifications where commenters have noted the possibility of a perceived conflict. Thus, we have clarified that promotion must be consistent with FDA laws and VA criteria-for-use. We note that nothing in this regulation should be construed as permitting promotional or educational activities that are not in compliance with applicable FDA requirements.

The proposed rule had stated that educational programs and associated materials must conform to the requirements detailed in paragraphs (d)(1) through (9), now designated paragraphs (f)(1) through (6). A commenter recommended that we clarify in proposed paragraph (d) whether educational programs and associated materials will be deemed suitable if they satisfy those requirements. We accept this recommendation and have changed the language in the rule to reflect this clarification. Paragraph (f) now states: ''[E]ducational programs and associated materials will be deemed suitable if the approval authority determines that they conform to the following requirements.'' We have also removed the word ''new'' as a modifier for ''drug'' and ''drug-related supply.'' We believe that the use of the term ''new drug'' could confuse sales representatives because this is a term that is specifically defined by the Federal Food, Drug, and Cosmetic Act. 21 U.S.C. 321(p). VA used the word ''new'' in the proposed rule to limit this sentence only to drugs and drug-related supplies that are ''already on the VANF but ha[ve] not yet been reviewed by VA[.]'' Because this clause already exists in the regulation text, the word ''new'' is extraneous and is removed.

Another comment suggested that VA clarify the ''clear identification'' requirements that had appeared in proposed paragraphs (d)(6) and (d)(7), in order to give companies proper notice about how to comply with the rule. As explained below, we have replaced the ''clear identification'' requirement with a specific requirement that educational programs and associated materials regarding a drug, drug-related supply, or therapeutic indication be submitted to a specific approval authority. With respect to educational programs and associated materials regarding non-VANF drugs or drug-related supplies without criteria-for-use, we have cross-referenced the approval and other requirements found in newly designated paragraph (d). We note that the 60-day submission requirement applies to all proposed educational programs and associated materials.

One commenter requested that VA clarify that the provision of journal articles that increase the reader's knowledge should be specifically exempted from the rule, or otherwise advise how journal articles may be provided in compliance with the rule. There exist multiple avenues for the distribution of journal articles and similar information and therefore we decline to make any change in response to this comment. First, we note that VA staff and patients are free to research and acquire any medical literature they see fit. Second, as noted above, we have clarified in new paragraph (a) that ''[t]his rule governs on-site, in-person promotional activities * * *. It does not apply to the distribution of information and materials through other means.'' Therefore, journal articles may be distributed in connection with on-site activities as long as the pharmaceutical company representative complies with the requirements of this rule. Further, nothing in this rule can or should be interpreted to prevent the distribution of such materials through means other than on-site, in-person distribution (e.g., through the mail). For further guidance, we note that parties distributing journal articles or other reprints that contain off-label uses should consult the FDA's ''Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices.''

We received multiple comments requesting clarification of the content of proposed paragraph (e), now designated paragraph (g), as it relates to the provision of free drugs by pharmaceutical company representatives. We agree with the comments that ''donations'' is a misleading phrase to use because it might connote charitable donation programs in which pharmaceutical companies participate. Therefore, we have removed all references to ''donations'' and instead use the term ''samples.'' One commenter asked that VA clarify the meaning of the phrase ''trial-use'' and clarify the relationship between proposed paragraph (e)(2) and clinical trials. The phrase ''trial-use'' was intended to refer to the use of the samples on a trial basis. However, as the comment demonstrates, use of the word ''trial'' might connote formal clinical trials. Therefore, we have revised proposed paragraph (e)(2), now designated paragraph (g)(2), to remove the reference to ''trial-use'' and instead state that ''[a]ll usage information pertaining to the intended use of these drugs or drug-related supplies must be forwarded to the VISN Pharmacist Executive or VISN Formulary Committee.''

Further comments on proposed paragraph (e)(2), now designated paragraph (g)(2), suggest that VA should clarify the conduct that constitutes compliance with this paragraph, and clarify whether VA employees may accept samples from their own personal, non-VA physicians. We have made minor revisions to the language of this section to clarify the requirements for drug samples. First, we clarify that the pharmaceutical company representative ''must submit samples of drugs and drug-related supplies for approval to the person at the medical facility to whom such responsibility is delegated under local policy, usually the Director.'' Second, we require that ''[a]ll usage information pertaining to these drugs or drug-related supplies must be forwarded to the VISN Pharmacist Executive or VISN Formulary Committee.'' Third, assuming approval of a drug or drug-related supply has been obtained, we require that ''[a]ll samples of drugs or drug-related supplies must be delivered to the Office of the Chief of Pharmacy Services for proper storage, documentation and dispensing.'' Third, this rule does not regulate the conduct of VA employees when receiving medical care from their own physicians, and nothing in this rule may be construed as regulating the private relationship between a VA employee and his or her personal doctor. Therefore, we make no change to the statement that ''[d]rug or drug-related supply samples may not be provided to VA staff for their personal use.'' Finally, we removed the clause ''the intended use of'' in reference to information that ''must be forwarded to the VISN Pharmacist Executive or VISN Formulary Committee. We did not intend to limit ''information'' to the intended use of the drug; rather, we intended to require that pharmaceutical

companies forward appropriate information.

We also revised the last sentence of proposed paragraph (e)(1), now designated paragraph (g)(1), to remove the words ''of travel'' that had appeared in the proposed rule, because the statutory authority applies to all gifts in support of VA staff official travel, not just ''[g]ifts of travel.''

Another comment requested that the prohibition on pharmaceutical company representative visits and the distribution of materials, in instances where VA staff or departments indicate that they wish not to be called on by pharmaceutical company representatives, should exclude visits and materials that are necessary for patient safety, such as product recalls or critical, substantive changes to warnings about particular medications. We decline to make any changes based on this comment. First, we note that most communications of this nature can be made more quickly and effectively through electronic or telephonic communication, and personal visits should not be required. Second, the rule does not prohibit on-site distribution of any patient safety materials to the VA medical facility office of the Chief of Pharmacy Services or similar other appropriate authority for distribution as necessary for patient safety. In other words, if necessary, important patient safety information can be provided in-person to the VA medical facility office of the Chief of Pharmacy Services or other appropriate authority for distribution by VA.

A similar comment suggested that VA include a patient-safety exception to the educational programs and associated materials requirement in proposed paragraph (d)(4), now designated paragraph (f)(3). Specifically, the commenter requested that the rule permit documents and discussions related to an FDA-required risk evaluation and mitigation strategy, as well as product safety warning and other labels. We recognize the value of the information and did not intend the rule to conflict with any FDA requirements. Therefore, we have revised the rule to specify the permissibility of solicitation of protected health information or patient participation in pharmaceutical company-sponsored programs when ''required by Federal laws and regulations such as an educational program that is part of a risk evaluation and mitigation strategy required by the Food and Drug Administration.''

One commenter requested that VA clarify in proposed paragraph (f) whether pharmaceutical company representatives will be permitted to leave materials for individuals or departments on the do-not-call list when they are on-site for a scheduled appointment with another provider. We have clarified in newly designated paragraph (h)(1) that pharmaceutical company representatives may not ''leave any materials for'' any individuals or departments on the do-not-call list. The reason for this prohibition is that leaving products in this manner may disrupt our medical professionals' regular activities, particularly given that such professionals have put their names on a do-not-call list. Moreover, patients who see such products may be misled into believing that VA endorses the use of such product. As noted several times in this notice, nothing in this rule prohibits the transmission of materials by mail, and for the purposes of facilities management, we would prefer that materials be distributed in this manner.

A commenter requested that VA define or provide examples of a ''medical center conference'' in proposed paragraph (f)(6), now designated paragraph (h)(4), and provide an exception allowing pharmaceutical company representatives who sign a form or agreement to attend such conferences. We decline to define the term or provide examples because we believe this term is unambiguous. We reject the requested exception because patient-specific information may be discussed at medical center conferences, and an exception allowing pharmaceutical company representatives to attend these conferences would be inconsistent with VA's vigorous protection of patient privacy. We note that we have revised the phrase ''patient-specific material'' to ''information regarding individual patients.'' We believe that this language more precisely reflects the intended notion of protection of patient privacy. In addition, we have reworded the paragraph so that it says that a ''pharmaceutical company representative may not attend a medical center conference where information regarding individual patients is discussed,'' where the proposed rule had said that a ''sales representative is not allowed to attend a medical center conference where patient-specific material is discussed.'' The new phrasing is consistent with now designated paragraph (g)(3) and does not change the meaning.

Another comment suggested that VA clarify that this rule is implemented in the spirit of supporting appropriate pharmaceutical company representative access to VA facilities and staff. We agree with the spirit of this comment. VA fully intends to continue our positive relationships with pharmaceutical companies and pharmaceutical company representatives in the future. However, there is no need to revise the rule to add such a statement.

Comments That Provisions of the Rule are Redundant, or are Governed by Other Law or Guidance

As discussed earlier in this rulemaking, some commenters indicated that portions of the rule are unnecessary because the regulated behavior is also subject to other laws and/or regulations. For example, one comment stated that we need not regulate the provision of gifts or food to VA employees, because pharmaceutical company representatives are already subject to other ethical guidelines that address the behavior of pharmaceutical company representatives in this regard. We make no changes based on these comments. Such other laws and/or regulations are consistent with our regulation, and certainly restating the requirements in our own regulation does not adversely affect anyone, notwithstanding the commenters' characterization of these provisions as being ''redundant.'' Moreover, centralizing the relevant information in a single regulation will have administrative benefits. Other commenters objected to portions of the rule that they perceived as conflicting with or being duplicative of other laws and regulations. We address these comments below.

The limitations on the pharmaceutical company provision of food and gifts to VA employees are consistent with Standards of Ethical Conduct applicable to Executive Branch Employees, and restating the requirements in our own regulation provides clarity and does not adversely affect anyone, notwithstanding the commenters' characterization of these provisions as being ''redundant.'' To the extent that industry ethical standards impose similar requirements on their sales representatives, we note that such restrictions may be revised by industry. Moreover, centralizing the relevant information in a single regulation will have administrative benefits. One commenter stated that the rule's criteria-for-use requirements can conflict with the FDA's approval of certain prescribing information, also known as ''labeling.'' We make no changes based on these comments. While FDA approves drugs for certain purposes or uses based on the population at large and potential uses for the drug, VA further considers how a certain drug may be best-used for the benefit of our

unique patient population. While VA criteria-for-use may be more specialized or tailored than FDA-approved labeling, such criteria-for-use will not contradict FDA-approved labeling. If a pharmaceutical company representative believes that VA criteria-for-use contradicts FDA-approved labeling, that representative should seek clarification from the VISN Pharmacist Executive, or Chief of Pharmacy Services, or designee.

One commenter stated that VA should consider alternatives to the requirement that VA officials in the field review all educational programs and associated materials because the materials are already regulated by FDA, and the review requirement would place a large administrative burden on VA facilities. Another commenter requested that VA exclude from the rule educational materials that FDA does not require companies to disseminate, but does require to be submitted for FDA review, because a second layer of review is redundant and may undermine FDA's expertise if VA reaches a conclusion that differs from FDA. We decline to make any changes based on this comment. Pharmaceutical company representatives should only be distributing material that conforms with Federal laws and regulations including those administered by the FDA. Whether an educational program and associated materials are appropriate for a scheduled event is a narrower question. For example, a pharmaceutical company representative may seek approval for an educational program regarding a diabetes drug, but also wish to include materials related to a blood pressure drug. The VA approval authority could deny approval of the materials based on the inclusion of irrelevant material. However, this denial would not be a second review of the content of the FDA-approved material.

One commenter recommended that VA provide an appropriate staff member with discretionary authority to permit manufacturer-sponsored programs due to their potential benefit to patients. We reject this recommendation because the final rule presents pharmaceutical company representatives and companies with a clear procedure, described in proposed paragraph (d), now designated paragraph (f), to obtain approval for such programs at VA facilities. VA facilities' highest priority must at all times be to provide direct care to its patients, and must have the ability to limit the quantity and timing of programs so as not to impede clinicians' ability to provide care. It is inevitable that limited openings and competing programs will require that VA facilities determine which option is most clinically appropriate for its patients. For example, a VA facility may schedule a program detailing a new flu vaccination just before the start of flu season because it is timely and will impact a greater number of patients at their individual facility, rather than host a requested program about prenatal care. We note that the program about prenatal care need not be rejected outright and may be considered for a future date. Paragraph (f) will ensure that the clinical interests of VA's patients at each facility remain the most important factor in determining whether to permit educational programs and materials at VA facilities.

Another comment suggests that the requirement in proposed paragraph (d)(5), now designated paragraph (f)(4), that allows qualified VA pharmacy staff to grant exceptions to the logo display limitations may lead to unequal application in the field and should be removed. We disagree with this comment. Each VA medical facility must consider the needs of its individual patient populations in reaching determinations about educational materials, and we do not intend to limit their discretion by requiring VAMC acceptance or rejection of such materials. We note as well that the rule has specific standards that will prevent or minimize the potential for unequal application in the field, which include that the logo or name need not be removed if it is inconspicuous or if legal requirements (*e.g.,* trademark requirements) make removal impractical. As explained previously, we have also added the statement that ''this requirement does not apply to labeling required by the Food and Drug Administration,'' so as to ensure that this provision of the regulation does not conflict with FDA laws and regulations.

One commenter objected to the prohibition on labeling drug samples as ''samples,'' because that restriction contradicts with the Prescription Drug Marketing Act, which requires samples to be labeled as such. We agree with this comment and have removed the prohibition on labeling drug samples as ''samples.''

Recommended Policy Changes

One commenter requested an exception for the distribution of information about new molecular entities to certain VA decision-makers, including the VISN Pharmacist Executives, Chiefs of Pharmacy, specialty physicians and formulary decision-makers for each VAMC and VISN. As discussed above, the rule does in fact authorize the promotion of new molecular entities under proposed paragraph (c)(3), now designated paragraph (e). New molecular entities may be promoted at the discretion of a VISN Pharmacist Executive, Chief of Pharmacy Services, or designee. We do not believe it is necessary—or the best use of VA's resources—to limit the Executive's discretion in selecting a designee, or to require in all VISNs that the individuals described by the commenter be authorized to make this decision.

We have revised the definition of ''new molecular entity'' in proposed paragraph (a). The proposed rule defined the term as ''an active ingredient that has never before been marketed in the United States in any form,'' which would be a virtually impossible standard to measure, as there is no clear way to determine whether an ingredient has ''ever'' been marketed ''in any form.'' Therefore, we have revised the definition of the term to read: ''a drug product containing an active ingredient that has never before received U.S. Food and Drug Administration approval.'' Because VA lacks the expertise of FDA to independently analyze new molecular entities for safety and other purposes, we rely on those determinations already made by FDA regarding such entities. This revision should clarify some of the commenters' confusion as to the definition of new molecular entities, and in addition no longer defines the term in connection with marketing.

A separate comment was that VA should not require authorization by VISN Pharmacist Executives or the Chief of Pharmacy for promotion of non-VANF drugs, because each VA Medical Center could potentially adopt a different administrative approach, which may lead to educational disparity among VA staff. We reject this suggestion and continue to grant each VISN the flexibility to determine whether the promotion of a non-VANF drug is appropriate given the needs of its unique patient population. Adopting a single national policy regarding the promotion of non-VANF drugs would negatively impact patient care because VA medical centers must consider the specific needs of their patient population based on unique geographic and other demographic factors. For example, drugs such as certain antibiotics can and should be treated differently for rural and urban populations in order to maximize the effectiveness of the drug. Other examples would include facilities located in communities in which a particular illness is more prevalent, such as certain respiratory infections, or facilities that focus on the treatment of

a specific disease or disability. A single national policy would prove too rigid to meet the needs of VA patients at the local level.

Another commenter stated that VA should presumptively disallow educational programs and materials focusing on non-VANF drugs or drug-related supplies because promotion of such drugs can undercut the legitimacy of VA's medical formulary. We do not agree with the commenter to the extent that the comment can be read to suggest that non-VANF drugs without criteria-for-use should never be promotable. We believe that the provisions of newly-designated paragraph (d) contain sufficient safeguards on promotion of such drugs and drug-related supplies.

On the other hand, one comment suggested that VA not discourage the dissemination of educational programs or associated materials that focus on non-VANF drugs or drug-related supplies, because physicians only stand to better serve their patients by having access to such information. We have made several modifications to the rule to clarify the requirements for educational programs and associated materials regarding (1) a drug, drug-related supply, or new therapeutic indication for a drug that is already on the VANF, but has not yet been reviewed by VA; or (2) non-VANF drugs or drug-related supplies without criteria-for-use. Specifically, we have revised the substance of proposed paragraph (d)(6), now designated paragraph (f)(5), to require submission and approval of educational programs and associated materials regarding a drug, drug-related supply, or therapeutic indication to the VA medical facility's Chief of Pharmacy Services or designee. In turn, we removed the requirement that such educational programs and materials be clearly identified as discussing a new drug, drug-related supply, or therapeutic indication. We believe that submission to and approval by the Chief of Pharmacy Services or designee will ensure that such educational programs and associated materials are suitable. Similarly, we have revised the substance of proposed paragraph (d)(7), now designated paragraph (f)(6), to permit educational programs and associated materials regarding non-VANF drugs or drug-related supplies without criteria-for-use only if those drugs or drug-related supplies may be promoted under newly designated paragraph (d), which contains the requirements for promotion of non-VANF drugs or drug-related supplies without criteria-for-use. This revision removes the language from the proposed rule stating that such educational programs and associated materials ''are discouraged.'' Again, we believe that the review and approval procedures for these educational programs will ensure that these educational programs and associated materials are suitable.

One commenter requested that VA require direct comparison between industry-sponsored and non-sponsored sources in any disclosure. We agree with this comment with respect to educational programs and associated materials and added a new paragraph (f)(2) requirement that such a comparison be made where both industry-sponsored and non-sponsored sources of information exist for FDA-approved uses of a particular drug. We believe that such a comparison will provide VA staff with the ability to review the full range of data that exists for a particular drug within the limits established by FDA through comprehensive research, which will enable them to make the best decisions for VA patients. This commenter also suggested that VA educational material requirements should include a uniform format for disclosure of industry sponsorship. Additionally, the commenter recommended that VA regulate the format of disclosures in accordance with findings that maximize the effectiveness of disclosures on reducing the influence of marketing over physicians' decision-making. VA acknowledges the potential advantages to a uniform format and increased knowledge about the impact of disclosures, but these recommendations are beyond the scope of this particular rulemaking.

One commenter suggested that VA change the requirement that educational programs and materials must not contain company names or logos, stating that the requirement in proposed paragraph (d)(1) that such materials disclose any industry sponsorship, directly conflicts with proposed paragraph (d)(5), which states that no company names or logos may appear on patient educational materials. We make no changes based on this comment and note that the provision in proposed paragraph (d)(1) relates to introductory remarks and announcement brochures for educational programs. In contrast, proposed paragraph (d)(5) pertains to patient education materials. Therefore, we do not agree that any conflict exists between the two provisions. We note that proposed paragraphs (d)(1) and (5) are now designated as paragraphs (f)(1) and (4).

With respect to the limitation in proposed paragraph (d)(5), now designated paragraph (f)(4), on name and logos on patient educational materials, one commenter argued that smaller drug manufacturers will be unable or unwilling to produce literature specifically for VA due to cost. We note again that this rule applies only to in-person activities, and that companies (large or small) who do not wish to comply with paragraph (f) are free to continue to distribute their materials through other means. Nevertheless, we have inserted a sentence to clarify that proposed paragraph (d)(5), now designated as paragraph (f)(4), concerning logos, ''does not apply to labeling required by the Food and Drug Administration.''

According to one commenter, VA should permit physicians to grant meetings with pharmaceutical company representatives in patient care areas, particularly where working with a physician in a patient care area is necessary. We make no changes based on this comment. VA is committed to protecting patient privacy and generally does not find it appropriate for a pharmaceutical company representative to attend a meeting in a patient care area. However, we note that at many VA medical facilities, the offices for key VA staff members working in the emergency rooms are physically located within the emergency room itself. We do not intend to prevent qualified VA staff from holding meetings with pharmaceutical company representatives in their offices simply because the office is within the emergency room. We therefore have clarified that the patient-care area of the emergency room does not include staff offices that may be located in the emergency room by adding a parenthetical to that effect after ''emergency rooms'' in the list of ''patient-care areas'' under paragraph (h)(5), which was proposed paragraph (f)(7).

Another commenter suggested that VA should permit brochures in patient waiting areas because there is no disruption to treatment, and recommended that literature meeting FDA requirements should be presumptively permissible, and the display of a company's logo should not be restricted. We decline to permit brochures in patient waiting areas and have moved this prohibition from the section of the rule discussing educational programs and associated materials to the section of the rule discussing conduct of pharmaceutical company representatives more generally to clarify that distribution of such educational material is limited not only in connection with an educational program. This provision is now located

at paragraph (h)(6) and states: ''Pharmaceutical company representatives may only distribute materials on-site at the time and location of a scheduled appointment or educational program. In no circumstances may materials be left in patient care areas.'' We believe that the prohibition on placement of materials in patient care areas is necessary because manufacturer-sponsored brochures may not be consistent with VA's drug therapy management processes and could lead to confusion. VA occasionally determines that for the purposes of its patient population, the best use of a given drug may be for a specific use, rather than the broad array of conditions that FDA may have approved the drug for. Therefore, patients may become confused if promotional materials appear inconsistent with the VA clinician's appropriate use of the drug. Providing brochures in patient waiting areas could also create a perceived VA bias for or against certain products.

A commenter asserted that proposed paragraph (d)(3) would have a negative effect on patient care by preventing distribution of materials regarding Patient Assistance Programs (PAPs). Proposed paragraph (d)(3) stated that ''[p]romotional materials are not to be placed in any patient care area.'' As explained above, this provision was moved to a different part of the rule, is now designated as paragraph (h)(6), and states: ''Pharmaceutical company representatives may only distribute materials on-site at the time and location of a scheduled appointment or educational program. In no circumstances may materials be left in patient care areas.'' Patients who are using a particular drug and who require information distributed specifically to them through a PAP will not be affected by this paragraph; however, the distribution of such materials will have to be performed in accordance with the regulation. Under the regulation, PAP-related materials may be distributed directly by a pharmaceutical representative on-site pursuant to a scheduled appointed or approved educational program, or indirectly via mail. This will have no negative impact on patient care because VHA has always ensured, and will continue to ensure, that patients obtain any information necessary for their care.

A commenter asserted that the rule can be read to apply to drug company provision of items in connection with research trials. We emphasize that the marketing or in-person solicitation of any approved drug is governed by this regulation. This will have no impact, however, on the process for approving research protocols; it simply affects when and how materials concerning drugs are marketed on-site at VA facilities.

Finally, a commenter raised a concern that the regulation will undermine the ability of Federal Supply Schedule (FSS) contractors to market products that are on the FSS. Placement of a product on the FSS merely affects the price that VA will pay for the product. It has no impact on the in-person solicitation or promotion of that drug within VHA facilities. Whether or not a drug is on the FSS should not authorize a company's sales representative to behave differently from representatives of drugs that are otherwise recognized or approved for distribution to VA patients.

Comments Regarding the Disciplinary Process

We received a number of comments regarding the proposed disciplinary process, including a suggestion to remove proposed paragraph (g) in its entirety. We make no changes to the disciplinary process based upon the comments because such a process is necessary to protect patient safety, as well as VA staff's ability to provide the highest quality services to patients. We also note that VA does not intend to impose sanctions except as necessary to prevent future impropriety. However, it is important that we maintain the ability to do so. Although we decline to change the disciplinary process described in the proposed rule, we have made organizational changes to the disciplinary section of the rule to more clearly describe the process. Specifically, proposed paragraph (g) has been designated as paragraph (i) and now includes headings. We revised the heading of the entire paragraph from ''Failure to properly promote drugs or drug-related supplies within VA'' to ''Non-compliance'' because this heading is both more concise and accurate. We have also made non-substantive language changes for purposes of clarity. For example, we have removed the terminology referring to ''sales force'' and ''regional managers'' and instead use the defined term ''pharmaceutical company representative'' in the interest of clarity and consistency. In addition, we have removed the phrase ''commercial visits'' and refer only to ''visits'' as the modifier ''commercial'' is unnecessary.

A commenter suggested that VA clarify in the supplementary information of this rulemaking that most often problems between VA and pharmaceutical company representatives will be resolved informally and that formal action should be limited. We agree with this comment and further note that VA seeks to continue the traditionally amicable nature of interaction with pharmaceutical company representatives and companies at both the national and local levels. We make no changes to the regulation based upon the comment.

Another commenter stated that VA should provide clear guidance on which circumstances would justify a penalty to an entire sales force as opposed to an individual representative, as well as what would justify a penalty extending to other VA facilities. The commenter also requested clarification on what is meant by ''permanent revocation of commercial visiting privileges.'' We do not believe that the provisions are ambiguous. VA will analyze violations on a case-by-case basis. The rule provides sufficient notice of the acceptable and unacceptable behavior of pharmaceutical company representatives on VA property, and the distribution of materials while on VA property. The rule also provides sufficient direction as to the process that VA will follow when we are required to formally address non-compliant behavior. However, in response to the request for greater clarity, we have revised the rule so that rather than refer to ''instances of widespread misconduct'' in proposed (g)(3), paragraph (i)(2) now refers to ''multiple instances of misconduct.'' The word ''widespread'' could be misinterpreted to refer to the geographical location of the misconduct, rather than the recurrence of misconduct.

A commenter stated that proposed paragraph (g), now designated as paragraph (i), denies pharmaceutical companies due process, and suggests that VA require the opportunity for a hearing before revoking a representative or company's ability to speak with physicians at a VA facility. Another commenter requested that VA only limit restrictions to the specific VA facility in which the noncompliance with this rule occurred. We make no changes to the rule based on these comments. Due process concerns are not present here because revocation of visiting privileges would not deprive a pharmaceutical company representative of a constitutionally protected property interest. Further, we believe that the processes described in paragraph (i) are reasonable. Under paragraph (i), a pharmaceutical company representative and/or his or her supervisor is given notice of the noncompliance and the Director's interim action, a 30-day

window to respond to such notice, and a final written order detailing the circumstances of the violation and the reasons for the final action. Further, a pharmaceutical company is also given an opportunity for review of that final written order by the Under Secretary for Health. We have added to the first sentence of paragraph (i)(3) the word ''either'' to further clarify that the Director's final order must ''either'' confirm the action in the notice ''or'' specify another action.

Other related comments stated that VA should be required to notify the company of the noncompliance of one of its representatives. We believe that the burden to notify the company is properly placed on the pharmaceutical company representative. However, this rule does provide that VA will notify the appropriate manager or supervisor of the pharmaceutical company representative in instances where VA has found multiple instances of misconduct by an individual or multiple representatives.

One commenter asked that penalties ''[g]enerally * * * not be enforced during the notice period.'' Again, the regulation provides clear notice of what behaviors are unacceptable. The type of enforcement that would occur during the notice period would be restriction of an individual pharmaceutical company representative's access to a facility or facilities. We believe that this minimal restriction must be enforced during the notice period in order to prevent recurrence or escalation of the behavior at issue.

Additionally, we disagree with one commenter's assertion that the activities governed under this rule do not pose a security risk. VA has three primary objectives in limiting the privilege of pharmaceutical company representatives' promotional activities in VA facilities. First, our primary purpose in creating this rule is the protection of our patients' safety. Second, we seek to protect the integrity of VA's National Formulary and criteria-for-use. Third, we aim to protect the amount of time that VA clinicians have to commit to their patients. We believe that actions by pharmaceutical company representatives that violate any of the provisions of this rule threaten these goals.

Finally, a commenter asked whether a permanent revocation could be subject to subsequent review. We note again that such revocation may be appealed by the pharmaceutical company representative or company to the Under Secretary for Health within 30 days of the order for revocation.

Legal Arguments

One commenter contends that the proposed rule would violate the First Amendment protection of free speech by requiring that drugs and drug-related products, which are non-VANF and which have no criteria-for-use, may be promoted only if ''the promotion is specifically permitted by the VISN Pharmacist Executive, or Chief of Pharmacy Services or designee.''

Specifically, the commenter maintains that the proposed rule's procedure for obtaining permission to promote such drugs and drug-related products results in a content-based restriction on free-speech which ''denies patients the benefit of their doctor's most informed judgment on what is the right approach for their individual situation.'' The commenter states that VA has not explained how the above approval requirements are related to the goals enunciated in the proposed rule and advocates for decision authority to be given to VA medical departments and practitioners rather than pharmacy management.

We do not agree with the contention that the proposed procedures violate the First Amendment guarantee of free speech and thus reject the commenter's recommendations that VA give the decision authority to medical staff departments and practitioners rather than to pharmacy management. We do, however, believe that it is necessary to clarify the basis for these procedures.

First, this additional procedural requirement on promotion of non-VANF drug and drug-related supplies without criteria-for-use in VA hospitals is not a restriction of First Amendment free speech rights. We know of no right to discuss products with Government officials acting in their official capacity.

Specifically, the commenter does not contend that certain government property, which is open to other speakers, has been closed to pharmaceutical company representatives for use in communicating with private individuals or public officials not acting as such who might be willing to listen to them. Rather, the commenter appears to be claiming that pharmaceutical company representatives have an entitlement to a Government audience, VA physicians, so that they can express their views on non-VANF products without criteria-for-use. VA does not have an affirmative duty under the Constitution to listen to these views, nor is the Department in any way restricting pharmaceutical company representatives from communicating these views to members of the public, including VA physicians in their personal capacity, in a proper forum for free speech. VA hospitals are not such a forum.

Additionally, there is an important rationale supporting our proposal for more restrictive procedures for promotion of non-VANF drugs without criteria-for-use to VA doctors at VA facilities. That rationale is primarily based on the need to maintain and enhance patient safety. The VANF is a list of drugs that are approved either for general use or with specific criteria-for-use. They are placed on the VA National Formulary through a rigorous and scientifically-based process, in which patient safety is paramount with cost being a secondary consideration.

In this process, VA's Medical Advisory Panel (MAP), which includes physicians from both VA and the Department of Defense, and the VISN Pharmacist Executives (VPE) Committee reviews drugs and drug related supplies, including new molecular entities to determine their appropriate use in the VA patient population. An evidence-based process is used to determine such appropriate use, with the primary factors being patient safety and therapeutic value; improved access to pharmaceuticals; promotion of a uniform pharmacy benefit; and reduction in the acquisition cost of drugs when feasible. The VANF supplants the local and VISN formularies which previously existed. This migration to a National Formulary has allowed VA to rely more uniformly on evidence-based drug evaluations further enhancing patient safety.

The MAP and VPEs also contribute valuable experience and expertise in meeting the unique medication therapy needs of Veterans on an ongoing basis. For example, VA uses this expertise to closely manage a drug marketed for smoking cessation due to the potential for significant adverse drug events in patients with certain clinical characteristics that are over represented in the VA patient population. Drugs that are not approved for the National Formulary, also known as non-formulary drugs, may still be prescribed in specific instances via VA's formal non-formulary request process.

As a participant in the process to determine which drugs will appear on the VANF, and the appropriate uses for each, the VISN Pharmacist Executive, in consultation with the local Chief of Pharmacy, who has ultimate responsibility for prescribing practices at his or her facility, are the officials best-suited to determine when to allow promotion of Non-VA VANF products without criteria-for-use. Having an official with region-wide responsibility

for prescribing also better serves VA's ability to maintain uniform prescribing practices, which, as discussed above, has allowed VA to rely more uniformly on evidence-based drug evaluations.

Under the proposed rule, pharmacy management, the VA professionals with the detailed knowledge and expertise to make the decision on promotion of drugs that are non-VANF without criteria-for-use would be given the authority to make the decision. They would be acting in accord with input received from VA physician members of the MAP based on their review of available evidenced-based drug evaluations and thus best protect VA patients.

Another commenter requested that VA ''distinguish between solicitation of sales and provision of information about a product and allow uncensored visits by representatives who abide by VA time, place and manner conditions on meetings with the public.'' We make no changes based on this comment. First, this rule specifically precludes the application of VA's general prohibition against solicitations to pharmaceutical company representatives' promotion of drugs. VA strictly prohibits solicitation under 38 CFR 1.218(a)(8), yet this rule permits promotion, including educational activities, by pharmaceutical company representatives within the parameters set forth in the rule. Second, this rule sets precisely those ''time, place and manner conditions'' that the commenter requested. If the pharmaceutical company representative complies with the provisions of this rule, then an on-site, in-person visit will be granted. We note that pharmaceutical company representatives are not communicating with a public audience when speaking with VA staff in their professional capacities. On-duty VA staff, including health professionals charged with the duty to care for VA's patients, must be able to work without disruptions, and VA appropriately limits the public's access to VA facilities and staff to protect the safety and privacy of VA patients.

Commenters suggested that VA consult with the United States General Services Administration before implementing a rule that may interfere with contracts between VA and companies under the FSS rate, at which companies are willing to sell in exchange for marketing opportunities. We note that in the instance that this regulation interferes with any existing contracts, the terms of those contracts will continue to be honored. However, VA is not aware of any contracts that exist with any pharmaceutical companies that contain provisions like those mentioned by the commenter and we therefore make no changes to the rule at this time.

One commenter recommended that VA preempt local policies that may treat pharmaceutical company representatives who discuss prohibited topics as criminal trespassers. We decline to make any changes to the rule based on this comment for the following reasons. Currently, § 1.218, regarding security and law enforcement at VA facilities, describes general behavior that is prohibited on the grounds of VA property, and authorizes criminal sanctions in certain circumstances. Under § 1.218, persons who are not authorized to enter or remain on VA property are subject to a fine and/or a term of up to 6 months in prison. Under this final rule, § 1.220, VA may ultimately suspend or revoke visiting privileges for a pharmaceutical company representative or multiple representatives. Any such determination could be appealed to the Under Secretary for Health under paragraph (i)(5). If such suspension or revocation were imposed, then those representatives would not be authorized to enter VA property and would be subject to the sanctions listed in § 1.218(b).

At the same time, we note that this rule does indeed preempt all existing local policies that contradict this rule, as requested by the commenter. If the policy described by the commenter violates the rule then it is no longer lawful or effective; however, we have not been able to authenticate the memorandum described by the commenter.

A commenter suggested that VA ''adopt[ ] a uniform format for disclosure of industry sponsorship.'' We are unsure what is intended by this comment, but it appears that the commenter is requesting that VA adopt formats adopted by the Journal of the American Medical Association. We believe that this rule provides clear national guidance on disclosures, and the policies expressed in the rule are based on the particular needs of VA. As a government-run, national health care provider employing a wide variety of medical professionals and treating primarily our nation's veteran population, we believe that it is appropriate to adopt specific guidelines relevant to our national practice. We make no changes based on this comment.

Effect of Rulemaking on Local Policies

Some commenters recommended that VA explicitly preempt local policies with this rulemaking, or clarify that the new national policy will replace all existing local policies and provide substantive guidelines to the field. The commenters do not provide, and we are not aware of, any examples of official VA statements of policy (such as directives or handbook provisions) that conflict with this rule. If we were aware of such conflicts, we would specifically rescind such statements. Further, this regulation as a matter of law preempts any inconsistent local policies.

To the extent that VA employees in the field require further guidance than that provided in the rule, VA will issue policy directives and handbooks. This rule does not prevent the issuance of such guidance if such guidance is not in conflict with this rule. In fact, the existence of this regulation will provide VA a legal basis to issue and implement such non-regulatory guidance.

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary rules or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere

with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule has no such effect on State, local, or tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule does not contain any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not cause a significant economic impact on health care providers, suppliers, or other small entities. The rule generally concerns the promotion of drugs by large pharmaceutical companies and only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.009 Veterans Medical Care Benefits, 64.010 Veterans Nursing Home Care and 64.011 Veterans Dental Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on October 4, 2011, for publication.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of Information, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Dated: February 29, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. Add § 1.220 to read as follows:

§ 1.220 On-site activities by pharmaceutical company representatives at VA medical facilities.

(a) *Scope.* This rule governs on-site, in-person promotional activities, including educational activities, by pharmaceutical company representatives at VA medical facilities. It does not apply to the distribution of information and materials through other means.

(b) *Definitions.* For the purposes of this section:

Criteria-for-use means clinical criteria developed by the Department of Veterans Affairs (VA) at a National level that describe how certain drugs may be used. VA's criteria-for-use are available to the public at www.pbm.va.gov. Exceptions may be applied at the local level for operational reasons.

Drug or drugs means:

(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them;

(2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(3) Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(4) Articles intended for use as a component of any article specified in paragraphs (1), (2), or (3) of this definition.

Drug-related supplies means supplies related to the use of a drug, such as test strips or testing devices, inhalers, spacers, insulin syringes, and tablet splitters.

New molecular entity refers to a drug product containing an active ingredient that has never before received U.S. Food and Drug Administration approval.

Non-promotable drugs are drugs designated by VA as non-promotable on *http://www.pbm.va.gov.* A list of the drugs or drug-related supplies classified by VA as non-promotable may be requested by contacting the VA medical facility's Chief of Pharmacy Services.

Non-VANF drugs or drug-related supplies means drugs or drug-related supplies that do not appear on the VANF.

Pharmaceutical company representative means any individual employed by or contracted to represent a pharmaceutical manufacturer or retailer.

VA medical facility means any property under the charge and control of VA used to provide medical benefits, including Community-Based Outpatient Clinics and similar facilities.

VA National Formulary (VANF) drugs and/or drug-related supplies means any drug or drug-related supply that appears on the VA National Formulary (VANF). The VANF is available at *www.pbm.va.gov,* or may be requested by contacting the VA medical facility's Chief of Pharmacy Services.

Veterans Integrated Service Network (VISN) means one of the networks of VA medical facilities located in a particular region as designated by VA.

(c) *Promotion of drugs and drug-related supplies.* Notwithstanding § 1.218(a)(8), VA will allow promotion of VANF drugs and drug-related supplies, and non-VANF drugs and drug-related supplies with criteria-for-use, on-site and in-person at VA medical facilities if all of the following are true:

(1) Drugs or drug-related supplies are discussed, displayed and represented accurately;

(2) The promotion has significant educational value and does not inappropriately divert VA staff from other activities that VA staff would otherwise perform during duty hours, including patient care and other educational activities; and

(3) The drug or drug-related supply has not been classified by VA as non-promotable.

(d) *Promotion of non-VANF drugs and drug-related supplies without criteria-for-use.* Non-VANF drugs and drug-related supplies without criteria-for-use may be promoted only if the requirements of paragraphs (c)(1) through (3) of this section are met and the promotion is specifically permitted by the VISN Pharmacist Executive, or Chief of Pharmacy Services, or designee.

(e) *Promotion of a new molecular entity.* A new molecular entity may be promoted only if the requirements of paragraphs (c)(1) through (3) of this section are met and the promotion is specifically permitted by the VISN Pharmacist Executive, or Chief of Pharmacy Services, or designee. Such permission will be automatically revoked if the new molecular entity is subsequently designated non-promotable. Such permission must be reconsidered if the new molecular entity is denied VANF status.

(f) *Educational programs and associated materials.* For purposes of this section, an educational program is a pre-scheduled event or meeting during which a pharmaceutical company representative provides information about a drug or drug-related supply. All educational programs and associated materials must receive prior approval from the person at the VA medical facility to whom such approval authority has been delegated under local policy, usually the Chief of Pharmacy Services. All materials associated with a proposed educational program must be provided at least 60 days before the proposed date of the educational program or distribution of associated materials, unless VA agrees in an individual case to a different date, so that a determination of their suitability can be made. The approval authority will deem suitable any educational program and associated materials if it is part of a risk evaluation and mitigation strategy or other duty imposed by the Food and Drug Administration. Otherwise, educational programs and associated materials will be deemed suitable if the approval authority determines that they conform to the following requirements:

(1) Industry sponsorship must be disclosed in the introductory remarks and in the announcement brochure. Sponsorship includes any contribution, whether in the form of staple goods, personnel, or financing, intended to support the educational program.

(2) If industry-sponsored and non-sponsored sources of data or other analytical information exist for FDA-approved uses of a particular drug, a direct comparison between the two sources must be disclosed in the introductory remarks and in the announcement brochure.

(3) The educational program does not solicit protected health information or patient participation in pharmaceutical company-sponsored programs, except as may be required by Federal laws and regulations such as an educational program that is part of a risk evaluation and mitigation strategy required by the Food and Drug Administration.

(4) Patient educational materials must not contain the name or logo of the pharmaceutical manufacturer or be used for promotion of a specific medication, unless the VA Pharmacy Benefits Management Service determines that the logo or name is inconspicuous and legal requirements (e.g., trademark requirements) make their removal impractical. However, this requirement does not apply to labeling required by the Food and Drug Administration.

(5) Educational programs and associated materials regarding a drug, drug-related supply, or a new therapeutic indication for a drug that is already on the VANF but has not yet been reviewed by VA, must be submitted by the pharmaceutical company or pharmaceutical company representative to the VA medical facility's Chief of Pharmacy Services or designee.

(6) Educational programs and associated materials focusing primarily on non-VANF drugs or drug-related supplies without criteria-for-use are permitted only if those drugs or drug-related supplies may be promoted under paragraph (d) of this section.

(g) *Providing gifts, drugs or other promotional items to VA employees or facilities.*

(1) *General.* No pharmaceutical company representative may give, and no VA employee may receive, any item (including but not limited to promotional materials, continuing education materials, textbooks, entertainment, and gratuities) that exceeds the value permissible for acceptance under government ethical rules (5 CFR 2635.204(a)). However, such items may be donated to a medical center library or individual department for use by all employees, in accordance with medical center policy. Gifts in support of VA staff official travel may be accepted by the Department subject to advance legal review in accordance with 31 U.S.C. 1353, 41 CFR part 304, and VA policy regarding such gifts.

(2) *Samples of drugs and drug-related supplies.* Pharmaceutical company representatives must submit samples of drugs and drug-related supplies for approval to the person at the medical facility to whom such responsibility is delegated under local policy, usually the Director. All usage information pertaining to these drugs or drug-related supplies must be forwarded to the VISN Pharmacist Executive or VISN Formulary Committee. All samples of drugs or drug-related supplies must be delivered to the Office of the Chief of Pharmacy Services for proper storage, documentation and dispensing. Drug or drug-related supply samples may not be provided to VA staff for their personal use.

(3) *Donations of food.* Pharmaceutical company representatives may not provide food items of any type or any value to VA staff (including volunteers and without compensation employees) or bring food items into VA medical facilities for use by non-VA staff (e.g., employees of affiliates).

(h) *Conduct of pharmaceutical company representatives.* In addition to the other provisions in this section, pharmaceutical company representatives must conform to the following:

(1) *Contacts must be by appointment only.* In order to minimize the potential for disruption of patient care activities, a pharmaceutical company representative must schedule an appointment before each visit. Access to VA medical facilities by a pharmaceutical company representative without an appointment is not permitted under any circumstances. VA medical facilities may develop a list of individuals or departments that may not be called-on by pharmaceutical company representatives. A pharmaceutical company representative must not attempt to make appointments with, or leave any materials for, individuals or departments on the list. The list may be obtained at the VA medical facility office of the Chief of Pharmacy Services. A pharmaceutical company representative visiting a VA medical facility for a scheduled appointment may not leave promotional materials for, or initiate requests for meetings with, other VA staff; however, pharmaceutical company representatives may respond to requests initiated by VA staff during the visit.

(2) *Paging VA employees.* A pharmaceutical company representative may not use the public address (paging) system to locate any VA employee. Contacts using the electronic paging system (beepers) are permissible only if specifically requested by the VA employee.

(3) *Marketing to students.* Pharmaceutical company

representatives are prohibited from marketing to medical, pharmacy, nursing and other health profession students, including residents. Exceptions may be permitted when approved by, and conducted in the presence of, the staff member providing clinical supervision.

(4) *Attendance at conferences.* A pharmaceutical company representative may not attend a medical center conference where information regarding individual patients is discussed or presented.

(5) *Patient care areas.* Pharmaceutical company representatives generally may not wait for scheduled appointments or make presentations in patient-care areas, but may briefly travel through them, when necessary, to meet in a staff member's office. Patient-care areas include, but are not limited to:

(i) Patient rooms and ward areas where patients may be encountered;

(ii) Clinic examination rooms;

(iii) Nurses stations;

(iv) Intensive care units;

(v) Operating room suites;

(vi) Urgent care centers;

(vii) Emergency rooms (but not staff offices that may be located in them); or

(viii) Ambulatory treatment centers.

(6) *Distribution of materials.* Pharmaceutical company representatives may only distribute materials on-site at the time and location of a scheduled appointment or educational program. In no circumstances may materials be left in patient care areas.

(i) *Non-compliance.*

(1) *General.* The visiting privileges of a pharmaceutical company representative or multiple representatives may be limited, suspended, or revoked by the written order of the Director of the VA medical center of jurisdiction if the Director determines the pharmaceutical company representative(s) failed to comply with the requirements of this section.

(2) *Notice of interim action.* The Director will notify the pharmaceutical company representative of the noncompliance and of the Director's interim action under paragraph (i)(4) of this section. The Director will also notify the supervisor of the pharmaceutical company representative(s) if there have been multiple instances of misconduct. The notice will offer 30 days to provide a response; however, the interim action will be enforced effective the date of the notice.

(3) *Final written order.* At the end of the 30-day period for a response, or after the Director receives a timely response, the Director will issue to the pharmaceutical company representative and supervisor a final written order either confirming the action taken as indicated in the notice, or specifying another action to be taken under paragraph (i)(4) of this section. The written order may also state that the Director has determined that no further action is required. Any final written order issued by the Director shall include a summary of the circumstances of the violation, a listing of the specific provisions of this section that the pharmaceutical company representative(s) violated, and the bases for the Director's determination regarding the appropriate action. Notice concerning a final written order suspending or permanently revoking the visiting privileges of multiple pharmaceutical company representatives shall include specific notice concerning the right to review of the Director's order by the Under Secretary for Health.

(4) *Actions.* Actions that may be imposed under this section include limitation, suspension, or permanent revocation of visiting privileges at one or more VA medical facilities. In determining the appropriate action, the Director shall consider the requirements of this section, the circumstances of the improper conduct, any prior acts of misconduct by the same pharmaceutical company representative, any response submitted by the pharmaceutical company representative or their supervisor under paragraph (i)(2) of this section, and any prior written orders issued or other actions taken with respect to similar acts of misconduct.

(5) *Review.* The pharmaceutical company may request the Under Secretary's review within 30 days of the date of the Director's final written order by submitting a written request to the Director. The Director shall forward the initial notice, any response, the final written order, and the request for review to the Under Secretary for a final VA decision. VA will enforce the Director's final written order while it is under review by the Under Secretary. The Director will provide the individual who made the request written notice of the Under Secretary's decision.

(Authority: 38 U.S.C. 501)

[FR Doc. 2012–5279 Filed 3–2–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2011–0542; FRL–9642–3]

RIN 2060–AR07

Regulation of Fuels and Fuel Additives: Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA published a direct final rule on January 5, 2012 to amend the Renewable Fuel Standard program regulations. Because EPA received adverse comment, we are withdrawing the direct final rule.

DATES: Effective March 5, 2012, EPA withdraws the direct final rule published at 77 FR 700, on January 5, 2012.

FOR FURTHER INFORMATION CONTACT: Vincent Camobreco, Office of Transportation and Air Quality (MC6401A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–9043; fax number: (202) 564–1686; email address: *camobreco.vincent@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA published a direct final rule on January 5, 2012 (77 FR 700) to amend the Renewable Fuel Standard program regulations. The amendments would have expanded Table 1 of § 80.1426 to identify additional renewable fuel production pathways and pathway components that could be used in producing qualifying renewable fuel under the Renewable Fuel Standard program. We stated in that direct final rule that if we received adverse comment by February 6, 2012, that we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on several of the changes included in the revised Table 1 of § 80.1426. Since the regulatory amendment in the direct final rule was a single Table including all changes, withdrawal based on the adverse comments we have received requires withdrawal of the entire revised Table. EPA intends to address all comments in a subsequent final action, which will be based on the parallel proposed rule also published on January 5, 2012 (77 FR 462).

As stated in the direct final rule and the parallel proposed rule, we will not

institute a second comment period on this action.

Dated: February 27, 2012.

Lisa P. Jackson,

Administrator.

Accordingly, the regulatory amendments published on January 5, 2012 (77 FR 700) are withdrawn as of March 5, 2012.

[FR Doc. 2012–5256 Filed 3–2–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8221]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Barnett, Township of, Jefferson County	422440	April 25, 1979, Emerg; August 24, 1984, Reg; March 15, 2012, Susp.	March 15, 2012	March 15, 2012.
Beaver, Township of, Jefferson County	422441	May 15, 1979, Emerg; February 1, 1985, Reg; March 15, 2012, Susp.	.....do	Do.
Bell, Township of, Jefferson County	422244	March 7, 1977, Emerg; April 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
Big Run, Borough of, Jefferson County	420508	May 18, 1976, Emerg; June 4, 1990, Reg; March 15, 2012, Susp.	.....do	Do.
Brockway, Borough of, Jefferson County.	420509	January 17, 1974, Emerg; July 3, 1990, Reg; March 15, 2012, Susp.	.....do	Do.
Brookville, Borough of, Jefferson County.	420510	June 18, 1974, Emerg; April 16, 1991, Reg; March 15, 2012, Susp.	.....do	Do.
Clover, Township of, Jefferson County	422442	May 18, 1976, Emerg; July 3, 1990, Reg; March 15, 2012, Susp.	.....do	Do.
Eldred, Township of, Jefferson County	422443	May 21, 1979, Emerg; January 17, 1985, Reg; March 15, 2012, Susp.	.....do	Do.
Falls Creek, Borough of, Jefferson County.	420511	August 8, 1975, Emerg; September 6, 1989, Reg; March 15, 2012, Susp.	.....do	Do.
Gaskill, Township of, Jefferson County	421727	February 3, 1976, Emerg; June 18, 1990, Reg; March 15, 2012, Susp.	.....do	Do.
Heath, City of, Jefferson County	421728	February 25, 1977, Emerg; April 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
Henderson, Township of, Jefferson County.	421729	September 16, 1974, Emerg; April 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
Knox, Township of, Jefferson County ...	421730	April 25, 1979, Emerg; April 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
McCalmont, City of, Jefferson County ..	421731	October 15, 1975, Emerg; April 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
Oliver, Township of, Jefferson County ..	421732	May 10, 1979, Emerg; August 24, 1984, Reg; March 15, 2012, Susp.	.....do	Do.
Perry, Township of, Jefferson County ...	422444	January 12, 1977, Emerg; April 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
Pinecreek, Township of, Jefferson County.	422445	May 4, 1979, Emerg; February 1, 1985, Reg; March 15, 2012, Susp.	.....do	Do.
Polk, Township of, Jefferson County	421733	May 16, 1979, Emerg; September 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
Porter, Township of, Jefferson County ..	422446	April 25, 1979, Emerg; August 24, 1984, Reg; March 15, 2012, Susp.	.....do	Do.
Punxsutawney, Borough of, Jefferson County.	420512	October 24, 1973, Emerg; February 15, 1979, Reg; March 15, 2012, Susp.	.....do	Do.
Reynoldsville, Borough of, Jefferson County.	420513	February 22, 1974, Emerg; April 17, 1978, Reg; March 15, 2012, Susp.	.....do	Do.
Ringgold, Township of, Jefferson County.	422447	March 7, 1977, Emerg; August 24, 1984, Reg; March 15, 2012, Susp.	.....do	Do.
Rose, Township of, Jefferson County ...	421734	May 9, 1979, Emerg; September 24, 1984, Reg; March 15, 2012, Susp.	.....do	Do.
Snyder, Township of, Jefferson County	421735	September 15, 1975, Emerg; September 6, 1989, Reg; March 15, 2012, Susp.	.....do	Do.
Summerville, Township of, Jefferson County.	420514	April 11, 1974, Emerg; July 3, 1990, Reg; March 15, 2012, Susp.	.....do	Do.
Sykesville, Borough of, Jefferson County.	420515	September 19, 1974, Emerg; August 19, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
Timblin, Borough of, Jefferson County ..	422448	May 4, 1977, Emerg; September 24, 1984, Reg; March 15, 2012, Susp.	.....do	Do.
Union, Township of, Jefferson County ..	422449	April 30, 1979, Emerg; January 17, 1985, Reg; March 15, 2012, Susp.	.....do	Do.
Warsaw, Township of, Jefferson County	422450	March 1, 1977, Emerg; January 17, 1985, Reg; March 15, 2012, Susp.	.....do	Do.
Washington, Township of, Jefferson County.	422451	September 30, 1975, Emerg; September 6, 1989, Reg; March 15, 2012, Susp.	.....do	Do.
Winslow, Township of, Jefferson County.	421215	December 30, 1976, Emerg; July 3, 1990, Reg; March 15, 2012, Susp.	.....do	Do.
Worthville, Borough of, Jefferson County.	420516	September 10, 1975, Emerg; September 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
Young, Township of, Jefferson County	421737	January 19, 1976, Emerg; April 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Mississippi:				
Humphreys County, Unincorporated Areas.	280192	January 14, 1974, Emerg; January 19, 1983, Reg; March 15, 2012, Susp.	.....do	Do.
Isola, Town of, Humphreys County	280190	January 14, 1974, Emerg; July 3, 1978, Reg; March 15, 2012, Susp.	.....do	Do.
Louise, Town of, Humphreys County	280208	March 12, 1974, Emerg; May 1, 1979, Reg; March 15, 2012, Susp.	.....do	Do.
Region V				
Indiana:				
Lafayette, City of, Tippecanoe County ..	180253	February 7, 1975, Emerg; November 19, 1980, Reg; March 15, 2012, Susp.	.....do	Do.
Tippecanoe County, Unincorporated Areas.	180428	December 24, 1975, Emerg; March 16, 1981, Reg; March 15, 2012, Susp.	.....do	Do.
Region VI				
Arkansas: Independence County, Unincorporated Areas.	050090	July 3, 1978, Emerg; January 6, 1988, Reg; March 15, 2012, Susp.	.....do	Do.
New Mexico:				
Chama, Village of, Rio Arriba County ...	350050	August 2, 1994, Emerg; August 5, 1997, Reg; March 15, 2012, Susp.	.....do	Do.
Espanola, City of, Rio Arriba County	350052	April 4, 1975, Emerg; February 19, 1986, Reg; March 15, 2012, Susp.	.....do	Do.
Texas:				
Burnet, City of, Burnet County	480092	March 24, 1975, Emerg; September 18, 1987, Reg; March 15, 2012, Susp.	.....do	Do.
Cottonwood Shores, City of, Burnet County.	481614	September 24, 1990, Emerg; November 16, 1990, Reg; March 15, 2012, Susp.	.....do	Do.
Granite Shoals, City of, Burnet County	481149	September 22, 1976, Emerg; November 16, 1990, Reg; March 15, 2012, Susp.	.....do	Do.
Meadowlakes, City of, Burnet County ...	481613	April 13, 1989, Emerg; November 16, 1990, Reg; March 15, 2012, Susp.	.....do	Do.
Ector County, Unincorporated Areas	480796	September 11, 1981, Emerg; March 4, 1991, Reg; March 15, 2012, Susp.	.....do	Do.
Region VII				
Missouri:				
Branson, City of, Taney County	290436	December 10, 1971, Emerg; October 26, 1976, Reg; March 15, 2012, Susp.	.....do	Do.
Bull Creek, Village of, Taney County	290916	December 6, 1993, Emerg; September 30, 1997, Reg; March 15, 2012, Susp.	.....do	Do.
Hollister, City of, Taney County	290437	February 14, 1975, Emerg; March 18, 1985, Reg; March 15, 2012, Susp.	.....do	Do.
Rockaway Beach, City of, Taney County.	290438	April 26, 1999, Emerg; March 1, 2000, Reg; March 15, 2012, Susp.	.....do	Do.
Taney County, Unincorporated Areas ...	290435	June 20, 2002, Emerg; April 1, 2004, Reg; March 15, 2012, Susp.	.....do	Do.
Region VIII				
Utah:				
Charleston, Town of, Wasatch County	490165	October 22, 1975, Emerg; August 5, 1980, Reg; March 15, 2012, Susp.	.....do	Do.
Daniel, Town of, Wasatch County	490033	N/A, Emerg; May 12, 2010, Reg; March 15, 2012, Susp.	.....do	Do.
Heber City, City of, Wasatch County	490166	March 25, 1975, Emerg; March 18, 1987, Reg; March 15, 2012, Susp.	.....do	Do.
Wasatch County, Unincorporated Areas	490164	April 4, 1975, Emerg; October 1, 1986, Reg; March 15, 2012, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: February 17, 2012.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–5218 Filed 3–2–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate adjusted thresholds for application of trade agreements.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–8384; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION: DFARS Case 2012–D005 was published in the **Federal Register** as a final rule on January 30, 2012 (77 FR 4630). The final rule incorporated adjusted thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

This final rule incorporates additional adjustments to trade agreements thresholds and makes conforming changes to clause dates, as applicable.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN CONTRACTING

225.7017–3 [Amended]

■ 2. Section 225.7017–3 is amended:

■ a. In paragraph (b) by removing ''photovoltaic devices valued at less than $203,000'' and adding ''photovoltaic devices valued at less than $202,000'' in its place; and

■ b. In paragraph (c)(2), removing ''photovoltaic devices that are valued at $203,000 or more'' and adding ''photovoltaic devices that are valued at $202,000 or more'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Section 252.212–7001 is amended:

■ a. By removing the clause date ''(FEB 2012)'' and adding ''(MAR 2012)'' in its place; and

■ b. In paragraph (b)(12), removing ''(DEC 2011)'' and adding ''(MAR 2012)'' in its place.

252.225–7017 [Amended]

■ 4. Section 252.225–7017 is amended:

■ a. By removing the clause date ''(DEC 2011)'' and adding ''(MAR 2012)'' in its place;

■ b. In paragraph (c)(2), removing ''$70,079'' and adding ''$77,494'' in its place;

■ c. In paragraph (c)(3), removing ''$70,079 or more but less than $203,000'' and adding ''$77,494 or more but less than $202,000'' in its place; and

■ d. In paragraph (c)(4), removing ''$203,000'' and adding ''$202,000'' in its place.

252.225–7018 [Amended]

■ 5. Section 252.225–7018 is amended:

■ a. By removing the clause date ''(DEC 2011)'' and adding ''(MAR 2012)'' in its place;

■ b. In paragraphs (b)(1) and (b)(2), removing ''$203,000'' and adding ''$202,000'' in its place;

■ c. In the introductory text of paragraph (c)(3), removing ''$70,079'' and adding ''$77,494'' in its place;

■ d. In the introductory text of paragraph (c)(4), removing ''If $70,079 or more but less than $203,000'' and adding ''If $77,494 or more but less than $202,000'' in its place; and

■ e. In the introductory text of paragraph (c)(5), removing ''$203,000'' and adding ''$202,000'' in its place.

[FR Doc. 2012–5216 Filed 3–2–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XB051

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2012 Pacific cod total allowable catch (TAC) allocated to trawl catcher vessels in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 29, 2012, through 1200 hrs, A.l.t., April 1, 2012.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2012 Pacific cod TAC allocated to trawl catcher vessels in the BSAI is 38,117 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2012 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 35,517 mt and is setting aside the remaining 2,600 mt as bycatch to support other anticipated groundfish

fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 27, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 29, 2012.

Steven Thur,

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

[FR Doc. 2012–5296 Filed 2–29–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 43
Monday, March 5, 2012

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 211 and 235

RIN 0584–AD96

Fresh Fruit and Vegetable Program

Correction

In proposed rule document 2012–4181 appearing on pages 10981–10997 in the issue of February 24, 2012, make the following correction:

On page 10981, in the second column, after **FOR FURTHER INFORMATION CONTACT**, the contact information is corrected to read ''Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302; telephone: (703) 305–2590.''

[FR Doc. C1–2012–4181 Filed 3–2–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AO–370–A9; 11–0093; AMS–FV–10–0087; FV10–930–5]

Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to Marketing Order No. 930 (order), which regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and provides growers and processors with the opportunity to vote in a referendum to determine if they favor the changes. These amendments were proposed by the Cherry Industry Administrative Board (CIAB), which is responsible for local administration of the order. These amendments would revise: Section 930.10, the definition of ''Handle''; Section 930.50, ''Marketing Policy'' and Section 930.58, ''Grower Diversion Privilege.'' The amendments are intended to improve the operation and administration of the order.

DATES: The referendum will be conducted from March 19, 2012 to March 30, 2012. The representative period for the purpose of the referendum is July 1, 2010 through June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Parisa Salehi, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington DC 20250–0237; Telephone: (202) 270–9918, Fax: (202) 720–8938, or Email: *Parisa.Salehi@ams.usda.gov;* or Martin Engeler, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 2202 Monterey Street, Fresno, California 93721; Telephone: (559) 487–5110, Fax: (559) 487–5110, or Email: *Martin.Engeler@ams.usda.gov.*

Small businesses may request information on this proceeding by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 205–2830, Fax: (202) 720–8938, Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 4, 2011, and published in the March 14, 2011, issue of the **Federal Register** (76 FR 13528). The Recommended Decision was issued on November 3, 2011 and published in the November 9, 2011, issue of the **Federal Register** (76 FR 69673).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments are based on the record of a public hearing held April 20 and 21, 2011, in Grand Rapids, Michigan, and a second public hearing held April 26, 2011, in Provo, Utah. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act'', and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). Notice of this hearing was published in the **Federal Register** on March 14, 2011 (76 FR 13528). The notice of hearing contained the proposal submitted by CIAB and one proposal by the Agricultural Marketing Service (AMS). This action is a decision addressing the amendments listed in the notice of hearing.

The proposed amendments were recommended by CIAB and submitted to USDA on September 22, 2010.

The proposed amendments recommended by the CIAB are summarized below.

1. Amendment 1 would revise the term ''handle'' within the order. This proposal would revise existing section 930.10, Handle, to exclude handler acquisition of grower diversion certificates from definition of handle.

2. Amendment 2 would revise the ''marketing policy'' provisions in section 930.50 of the order so that grower-diverted cherries are not counted as production in the volume control formula.

3. Amendment 3 would revise the existing section 930.58, so grower-diverted cherries are not treated as actual harvested cherries.

In addition to the proposed amendments to the order, AMS proposed to making any additional changes to the order as may be necessary to conform to any amendment that may result from the hearings.

Upon the basis of evidence introduced at the hearings and the record thereof, the Administrator of AMS issued a Recommended Decision published in the **Federal Register** on November 9, 2011 (76 FR 69673). An opportunity to file written exceptions was provided through November 25, 2011. Two comments were received during that period. A comment was received on behalf of the Cherry

Industry Administrative Board. The second comment was from a grower/handler in Michigan. Both supported the proposed amendments. Therefore, no changes were adopted by AMS based on the received comments.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

There are approximately 40 handlers of tart cherries subject to regulation under the order and approximately 600 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the tart cherry producers and handlers are considered small entities under the SBA standards.

The geographic region regulated by the order includes the states of Michigan, New York, Oregon, Pennsylvania, Utah, Washington, and Wisconsin. Acreage devoted to tart cherry production in the regulated area has declined in recent years. According to data presented at the hearings, bearing acreage in 1987–88 totaled 50,050 acres; by 2010–11 it had declined to 35,650 acres. Michigan accounts for 73 percent of total U.S. bearing acreage with 26,200 bearing acres. Utah is second, with a reported 3,300 acres, or approximately nine percent of the total. The remaining states' acreage ranges from 600 to 1,800 acres. The order includes authority for (1) volume regulation, (2) promotion and research, and (3) grade and quality standards. Volume regulation is used under the order to augment supplies during low supply years, with product placed in reserves during large supply years.

Production of tart cherries can fluctuate widely from year to year. The magnitude of these fluctuations is one of the most pronounced for any agricultural commodity in the United States, and is due in large part to weather related conditions during the bloom and growing seasons. This fluctuation in supply presents a marketing challenge for the tart cherry industry because demand for the product is relatively inelastic; meaning a change in supply has a proportionately larger change in price.

According to data presented at the hearing, production has ranged from a low of 62.5 million pounds in 2002–03 to a high of 395.6 million pounds in 1995–96. For 2010–11, Michigan accounted for 71 percent of total U.S. production with 135 million pounds. Utah is second, with a reported 23 million pounds, or approximately twelve percent of the total. The remaining states produce between 15.4 and 1.2 million pounds.

During the hearings, multiple witnesses testified that they did not believe that the proposed amendments would have any adverse impacts on small agricultural service firms or small agricultural producers as defined by the SBA. According to the record, the proposed amendments would help agricultural businesses and growers by encouraging growers to divert some of their tart cherries in the orchard during years of extremely large supply. The proposed amendments would result in higher grower returns during years of extremely large supply. Furthermore, the growers who divert their crop do not incur harvest and transportation costs. The proposed amendments would result in a lower possibility of market saturation. Overall the supply of tart cherries in extremely large supply years would result in higher returns for growers.

The proposed amendments are intended to provide additional flexibility in administering the volume control provisions of the order, and to improve its operation and administration. Record evidence indicates that the proposed amendments are intended to benefit all producers and handlers under the order, regardless of size.

There are three proposed amendments. Amendment one would amend Section 930.10 of the order to change the definition of ''handle,'' so that handler acquisition of grower diversion certificates is not considered handling. Amendment two would amend the ''marketing policy'' provisions in Section 930.50 of the order so that grower-diverted cherries are not counted as production in the OSF. Amendment three would amend section 930.58 of the order so that grower-diverted cherries are not treated as actual harvested cherries. The proposed amendments would modify how grower diversions are accounted for under the order.

Evidence presented when the order was promulgated indicated that a grower diversion program could benefit the industry by managing fluctuating supply. Witnesses indicated that the order has been successful in this regard. However, the record indicated that the order should be more flexible in addressing how grower diversions are utilized under the order.

The most efficient method to deal with a surplus is at the lowest level of the production and processing chain. The industry wastes the least amount of resources if it diverts cherries in the orchard. Once they are harvested, chilled, washed, de-stemmed, sorted, pitted, and packed, significantly higher costs are incurred and there is a greater risk of waste. Diverting surplus cherries in the orchard is the most cost effective method of dealing with a surplus situation and provides the largest benefit to growers through lower costs.

The order establishes an opportunity for growers to undertake in-orchard diversions of cherries (section 930.58). These diversions are done during harvest in accordance with procedures defined under the order and are overseen by the CIAB. The CIAB issues grower diversion certificates to the growers that represent the pounds of cherries that were left in the orchard.

Growers redeem the diversion certificates with handlers, who use them as one of their compliance alternatives to meet their reserve or restricted obligation. However, under the current order definition of ''handle,'' handlers must include the pounds of cherries represented by the certificates as part of the total cherries that have been delivered and processed.

Consequently, grower in-orchard diversions effectively increase the supply of restricted cherries even though none of those cherries were delivered for processing. Grower diversion certificates are considered to be part of the total quantity of cherries that a handler receives and processes, and contribute to the total supply of restricted cherries in the OSF. This creates confusion in accounting for the cherries in years when cherries are restricted for both the growers and processors.

The OSF is the mechanism specified in the order and used by CIAB to determine the relationship between the demand and supply of tart cherries in a given year. When the supply of tart cherries exceeds the average demand, volume regulation is implemented.

In an effort to stabilize supply and prices, the tart cherry industry uses volume regulation which allows the industry to set free and restricted percentages. Free percentage cherries can be marketed by handlers to any outlet, while restricted percentage cherries are placed in a reserve inventory. The primary purpose of setting restricted percentages and placing cherries in a reserve inventory is to attempt to balance supply with demand.

A related component of the OSF under the order involves growers diverting cherries by leaving them unharvested in the orchard. Handlers can coordinate with their growers in large crop years by encouraging them to divert cherries from production. Handlers can then acquire the diversion certificates issued to growers and use them as credit toward their restriction or reserve obligations.

The interaction of sections 930.10 and 930.50 of the order establishes that grower in-orchard diversion is subject to the restriction percentage calculated for the year. Because of this, grower diversion certificates have less value when growers redeem them with handlers. Therefore, when a handler utilizes the grower diversion certificates received from growers, the certificates have a reduced value as a compliance tool in meeting the restricted obligation. Because the certificates have a reduced value growers will deliver most of their crop to handlers instead of diverting cherries in the orchard in large crop years.

The intent of these amendments is to remove the grower disincentive for in-orchard diversion. If the way grower diversions are accounted for is changed, the grower diversion program is expected to help mitigate the negative effects of oversupply, by increasing the amount of cherries diverted from production.

This action is expected to have a positive impact on growers. The value of the grower diversion certificates is expected to increase. As the value of the certificates increases, grower diversion of cherries in large crop years is expected to increase. Increased grower diversion activity will help to reduce excess supplies, which in turn is expected to have a positive impact on grower returns. In addition, grower costs associated with harvesting and transporting cherries to handlers will be reduced as more cherries are diverted.

This action is also expected to have a positive impact on handlers. As more fruit is diverted in the orchard, handlers will avoid the processing and storage costs that they would otherwise incur if growers harvested and delivered the fruit. Reducing the available supply of cherries is expected to mitigate the price depressing effects that oversupply typically has on the market, resulting in a positive effect for both growers and handlers.

Testimony at the hearing suggested that the amendments, which would encourage grower diversions, would not have a negative impact on small growers or handlers. The hearing record suggests that these amendments would benefit small growers by providing better opportunities to divert cherries in the orchard in large crop years. Small handlers are not always able to ship to export markets or have as much new product activity as larger handlers. Small handlers would benefit from these amendments by providing diversion credits as a way to meet their restrictions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, (Tart cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin). No changes in those requirements is necessary a result of this action. Should any change become necessary, it would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

The implementation of these requirements is not expected to have any additional costs on handlers. In fact, these proposed changes are expected to reduce costs for both growers and handlers.

In addition, the meetings regarding these proposals as well as the hearing dates were widely publicized throughout the existing tart cherry production area and all interested persons were invited to attend the meetings and the hearings and participate in CIAB deliberations on all issues. All CIAB meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. The CIAB itself is composed of members representing handlers, producers and the public. Finally, interested persons were invited to present evidence at the hearing on the regulatory and informational impacts of this action on small businesses.

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

Civil Justice Reform

The amendments to Marketing Order 930 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with the law, and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United Sates in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 9, 2011 (76 FR 69673) issue of the **Federal Register** are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400–407) to determine whether the annexed order amending the order regulating the handling of Tart cherries is approved or favored by growers and processors, as defined under the terms of the order, who during the representative period were engaged in the production or processing of tart cherries in the production area.

The representative period for the conduct of such referendum is hereby determined to be July 1, 2010, through, June 30, 2011.

The agents of the Secretary to conduct such referendum are hereby designated to be Christian Nissen, or Jennie Varela, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863)324–3375, Fax (863)325–8793, or Email: *Christian.Nissen@ams.usda.gov or Jennie.Varela@ams.usda.gov,* respectively.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Dated: February 28, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin[1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–612), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

1. The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of tart cherries grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

3. The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

5. All handling of tart cherries grown in the production area as defined in the marketing order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin shall be in conformity to, and in compliance with the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued on November 3, 2011 and published on November 9, 2011 (76 FR 69673) will be and are the terms and provisions of this order amending the order and are set forth in full below.

For the reasons stated in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR Part 930 as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise the introductory paragraph in § 930.10 to read as follows:

§ 930.10 Handle.

Handle means the process to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product, or divert cherries pursuant to § 930.59, or to otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof: *Provided,* That the term handle shall not include:

* * * * *

3. Revise paragraphs (d) and (e) of § 930.50 to read as follows:

§ 930.50 Marketing Policy.

* * * * *

(d) *Final percentages.* No later than September 15 of each crop year, the Board shall review the most current information available including, but not limited to, processed production and grower diversions of cherries during the current crop year. The Board shall make such adjustments as are necessary between free and restricted tonnage to achieve the optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation, the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

(1) The estimated total production of cherries;

(2) The estimated size of the crop to be handled;

(3) The expected general quality of such cherry production;

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(5) The expected demand conditions for cherries in different market segments;

(6) Supplies of competing commodities;

(7) An analysis of economic factors having a bearing on the marketing of cherries;

(8) The estimated tonnage held by handlers in primary or secondary inventory reserves;

(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year; and

(10) The quantity of grower-diverted cherries during the crop year.

* * * * *

4. Revise paragraph (a) of § 930.58 to read as follows:

§ 930.58 Grower Diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

[FR Doc. 2012–5197 Filed 3–2–12; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–11–0088; FV12–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2012–2013 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which begins on June 1, 2012. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 782,413 pounds and 38 percent, respectively, and for Class 3 (Native) spearmint oil of 1,162,473 pounds and 50 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: Comments must be received by April 4, 2012.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Manuel.Michel@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

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

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

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which begins on June 1, 2012.

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

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

considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year.

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

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 12, 2011, and recommended salable quantities and allotment percentages for both classes of oil for the 2012–2013 marketing year. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 782,413 pounds and 38 percent, respectively. For Native spearmint oil, the Committee, in a vote of seven members in favor and one member opposed, recommended the establishment of a salable quantity and allotment percentage of 1,162,473 pounds and 50 percent, respectively. The member opposing the action favored recommending an undetermined higher salable quantity and allotment percentage for Native spearmint oil.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year, which begins on June 1, 2012. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

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

The Far West's share of total global Scotch spearmint oil sales has varied considerably over the past several decades, from as high as 72 percent in 1988, and as a low as 27 percent in 2002. More recently, sales of Far West Scotch spearmint oil have been approximately 49 percent of world sales, and are expected to hold steady, or increase slightly, in upcoming years.

Despite the Far West's growing share of the world market for Scotch spearmint oil, in recent years the U.S. industry has faced challenging marketing conditions. From 2004 to 2007 the Far West spearmint oil industry experienced relatively good economic conditions, which motivated producers to increase their production acreage. The Far West region, which produced 635,508 pounds of Scotch spearmint oil in 2004, gradually increased production over a five-year period to 1,050,700 pounds in 2009, an increase of 65 percent.

However, as the Far West spearmint oil production was increasing, demand for spearmint oil started to decline significantly due in part to a weakening global economy. Sales, which had peaked at 1,002,779 pounds in 2005, declined to 627,868 pounds in 2009. As production rose and sales dropped, excess inventory of uncommitted Scotch spearmint oil began to accumulate. Scotch spearmint oil carry-in (unsold salable quantity from prior years that is available for sale at the beginning of a new marketing year), which serves as a measure of oversupply in the market, grew from 23,141 pounds in 2007 to 431,028 pounds in 2010.

The Committee's response to the deteriorating marketing environment after 2008 was to recommend the tightening of volume control regulations. The Committee, which had recommended a Scotch spearmint oil salable quantity of 993,067 pounds for 2008–2009, dropped the recommendation to only 566,523 pounds for the 2010–2011 marketing year. Similarly, the recommended allotment percentage was reduced from 50 percent during 2008–2009 to just 28 percent during the 2010–2011 marketing year.

By 2011, production of Far West Scotch spearmint oil had declined to an estimated 753,947 pounds and was at levels considered more in line with demand. Salable carry-in on June 1, 2011, had also dropped to 227,241 pounds.

When the Committee met in October 2011 to consider volume regulation for the 2012–2013 marketing year, the outlook for Far West Scotch spearmint oil was slightly more optimistic than in previous years and an increase in salable quantity and allotment percentage was recommended.

Although the spearmint industry continues to have some concern over the strength of the U.S. economy, at the same time there have been incremental improvements in the marketing conditions for Scotch spearmint oil. Current inventories, steady production, and increases in projected demand are all positive indicators of improving marketing conditions for Scotch spearmint oil, and are approaching levels considered stable for the industry.

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

The Committee estimates that the carry-in of Scotch spearmint oil on June 1, 2012, the primary measure of excess supply, will be approximately 161,154 pounds. This amount is down from the previous year's high of 227,241 pounds and is closer to a carry-in quantity that the Committee would consider to be favorable.

As previously mentioned, production of Scotch spearmint oil has also been decreasing and is nearing a level that the Committee would view as optimum. Production has declined from a high of 1,050,700 pounds in 2009 to 753,947

pounds in 2011 and is expected to remain comparatively the same during the 2012 season. The Committee considers this trend to be favorable because it has contributed relief to the industry's oversupply situation.

There are also reports that indicate consumer demand for mint flavored products is steady, providing some optimism for long-term increases in the demand for Far West spearmint oil. Spearmint oil handlers have indicated that demand for Scotch spearmint oil may be gaining strength. Handlers that had projected the 2011–2012 trade demand for Far West Scotch Spearmint oil to be in the range of 785,000 pounds to 1,000,000 pounds now expect it to increase to between 800,000 pounds to 1,100,000 pounds during the 2012–2013 marketing year.

However, this projected increase in demand, generally thought of as a positive indicator for the spearmint oil industry, is viewed cautiously by some industry participants. Due to the inelastic nature of demand for spearmint oil, the industry is aware that demand remains relatively consistent over time. Therefore, some handlers believe that the manufacturers of mint flavored products are currently increasing spearmint oil purchases just to rebuild inventories that were depleted during the worst of the recent U.S. economic recession. As such, those handlers feel that at least some of the recent increase in Scotch spearmint oil sales may not represent an actual increase in sustained demand, but instead a temporary response to fluctuations in the strategic inventories of spearmint product manufacturers.

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

Therefore, at the October 12, 2011, meeting, the Committee recommended the 2012–2013 Scotch spearmint oil salable quantity of 782,413 pounds and allotment percentage of 38 percent. The Committee utilized sales estimates for 2012–2013 Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production and inventory statistics, to arrive at these recommendations. The volume control levels recommended by the Committee represent an increase of 48,500 pounds and 2 percentage points over the previous year's final salable quantity and allotment percentage, reflecting a more positive assessment of the industry's economic conditions.

The Committee estimates that about 825,000 pounds of Scotch spearmint oil may be sold during the 2012–2013 marketing year. When considered in conjunction with the estimated carry-in of 161,154 pounds of Scotch spearmint oil on June 1, 2012, the recommended salable quantity of 782,413 pounds results in a total available supply of approximately 943,567 pounds of Scotch spearmint oil during the 2012–2013 marketing year. The Committee estimates that carry-in of Scotch spearmint oil into the 2013–2014 marketing year, which begins June 1, 2013, would be 118,567 pounds, a decrease of 42,587 pounds from the beginning of the 2012–2013 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Scotch spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2012—161,154 pounds.* This figure is the difference between the revised 2011–2012 marketing year total available supply of 961,154 pounds and the estimated 2011–2012 marketing year trade demand of 800,000 pounds.

(B) *Estimated trade demand for the 2012–2013 marketing year—825,000 pounds.* This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2011, as well as estimates provided by handlers and other meeting participants at the October 12, 2011, meeting. The average estimated trade demand provided at the six production area meetings is 859,444 pounds, which is 28,056 pounds less than the average of trade demand estimates submitted by handlers. The average of Far West Scotch spearmint oil sales over the last five years is 743,506 pounds.

(C) *Salable quantity required from the 2012–2013 marketing year production—663,846 pounds.* This figure is the difference between the estimated 2012–2013 marketing year trade demand (825,000 pounds) and the estimated carry-in on June 1, 2012 (161,154 pounds). This figure represents the minimum salable quantity that may be needed to satisfy estimated demand for the coming year with no carryover.

(D) *Total estimated allotment base for the 2012–2013 marketing year—2,058,981 pounds.* This figure represents a one percent increase over the revised 2011–2012 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—32.2 percent.* This percentage is computed by dividing the minimum required salable quantity (663,846 pounds) by the total estimated allotment base (2,058,981 pounds).

(F) *Recommended allotment percentage—38 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (32.2 percent), the average of the computed allotment percentage figures from the six production area meetings (36.2 percent), and input from producers and handlers at the October 12, 2011, meeting. The actual recommendation of 38 percent is based on the Committee's determination that the computed percentage (32.2 percent) may not adequately supply the potential 2012–2013 Scotch spearmint oil market.

(G) *The Committee's recommended salable quantity—782,413 pounds.* This figure is the product of the recommended allotment percentage (38 percent) and the total estimated allotment base (2,058,981 pounds).

(H) *Estimated available supply for the 2012–2013 marketing year—943,567 pounds.* This figure is the sum of the 2012–2013 recommended salable quantity (782,413 pounds) and the estimated carry-in on June 1, 2012 (161,154 pounds).

Class 3 (Native) Spearmint Oil

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

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India has been producing an

increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of the global sales of Native or Native quality spearmint oil. By 2008, that share had declined to only 48 percent. Since then, the percentage has been increasing and Far West Native spearmint oil was estimated to be over 70 percent of global sales in 2011.

Despite the fact that Far West Native spearmint oil has been gaining world market share, the industry has endured challenging marketing conditions over the past several years. Overproduction, coupled with a decrease in demand, created a similar oversupply situation for Native spearmint oil as was previously discussed for Scotch spearmint oil. Production of Native spearmint oil in the Far West region was 701,372 pounds in 2004, but increased to 1,453,896 pounds in 2009, an increase of 107 percent in just five years.

In addition to oversupply issues during this period, demand for Native spearmint oil was moving in the opposite direction. Sales of Far West Native oil peaked in 2004 at 1,249,507 pounds and then steadily declined over the next five years, dropping to just 976,888 pounds in 2009. As production rose and sales dropped, excess inventory of uncommitted Native spearmint oil began to accumulate. Salable carry-in of Native oil measured at the beginning of each marketing year, which serves as a measure of oversupply in the market, increased from 83,417 pounds at the beginning of the 2007–2008 marketing year to 343,517 pounds at the beginning of the 2010–2011 marketing year.

The Committee's response to the changing marketing conditions of Native spearmint oil was similar to its response of the Scotch spearmint oil situation. In order to achieve more orderly marketing conditions and provide the optimal level of Native spearmint oil, the Committee recommended initial salable quantities and allotment percentages at the start of each marketing period and subsequently reassessed the market to determine if intra-seasonal increases were necessary. The approach proved successful in providing the market with adequate levels of Native spearmint oil.

By 2010, production of Far West Native spearmint oil had decreased and was more in line with market demand. The Committee, which recommended a Native spearmint oil salable quantity of 953,405 pounds in 2010–2011, increased the recommendation to 1,266,161 pounds in the 2011–2012 marketing period. Similarly, the recommended allotment percentage, which was 50 percent in 2010–2011, increased to 55 percent during the 2011–2012 marketing period. Salable carry-in on June 1, 2011, was estimated to be approximately 164,809 pounds.

When the Committee met on October 12, 2011, to consider volume regulations for the upcoming 2012–2013 marketing year, the general consensus within the Native spearmint oil industry was that marketing conditions were improving marginally in comparison to recent years.

Although overproduction of Native spearmint oil has improved significantly, this continues to be an issue of constant concern for the industry. Production of Far West Native spearmint oil, which has declined from a high of 1,453,896 pounds in 2009 to approximately 1,191,707 pounds in 2011, is expected to remain relatively the same, or increase slightly, during the 2012 season. The Committee considers the current level of production to be consistent with the projected demand of Native spearmint oil in upcoming years.

In addition to an improved supply situation, demand for Far West Native spearmint oil appears to have halted its downward movement, and there is even some optimism for modest improvements in demand during the coming year. Spearmint oil handlers, who previously projected the 2011–2012 trade demand for Far West Native spearmint oil in the range of 1,225,000 pounds to 1,400,000 pounds, have projected trade demand for the 2012–2013 marketing period to be in the range of 1,200,000 pounds to 1,500,000 pounds.

However, similar to Scotch spearmint oil, the slight increase in projected Native spearmint oil demand, generally thought of as a positive indicator for the industry, is viewed by some handlers with caution. As mentioned previously, consumer demand for mint flavored products is expected to be steady or increase slightly moving forward, which provides optimism for long-term improvement in the demand for Far West spearmint oil. Some handlers, though, have reported that the manufacturers of such products may just be temporarily increasing purchases of spearmint oil to rebuild inventories that were depleted during the worst of the current U.S. economic recession. As such, the handlers believe that at least some of the recent increase in purchases does not represent an actual increase in sustained demand but, rather, a short-term response to fluctuations in the strategic inventories of the manufacturers.

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

As such, at the October 12, 2011, meeting, the Committee recommended a 2012–2013 Native spearmint oil salable quantity of 1,162,473 pounds and an allotment percentage of 50 percent. The Committee utilized Native spearmint oil sales estimates for 2012–2013, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. These recommended volume control levels represent a 103,688 pound and a 5 percentage point decrease over the previous year's final salable quantity and allotment percentage. However, the Committee maintains the option to recommend an intra-seasonal increase, as it has done in the past two marketing periods, if demand rises beyond expectations.

The Committee estimates that approximately 1,300,000 pounds of Native spearmint oil may be sold during the 2012–2013 marketing year. When considered in conjunction with the estimated carry-in of 180,970 pounds of Native spearmint oil on June 1, 2012, the recommended salable quantity of 1,162,473 pounds results in an estimated total available supply of 1,343,443 pounds of Native spearmint oil during the 2012–2013 marketing year. The Committee also estimates that carry-in of Native spearmint oil at the beginning of the 2013–2104 marketing year will be approximately 43,443 pounds.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation for the proposed Native spearmint oil salable quantity and allotment percentage for the 2012–2013 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2012—180,970 pounds.* This figure is the difference between the revised 2011–2012 marketing year total available supply of 1,430,970 pounds and the estimated 2011–2012 marketing year trade demand of 1,250,000 pounds.

(B) *Estimated trade demand for the 2012–2013 marketing year—1,300,000 pounds.* This estimate is established by

the Committee and is based on input from producers at the seven Native spearmint oil production area meetings held in late September and early October 2011, as well as estimates provided by handlers and other meeting participants at the October 12, 2011, meeting. The average estimated trade demand provided at the seven production area meetings was 1,300,833 pounds, whereas the handler estimate ranged from 1,200,000 pounds to 1,500,000 pounds.

(C) *Salable quantity required from the 2012–2013 marketing year production—1,119,030 pounds.* This figure is the difference between the estimated 2012–2013 marketing year trade demand (1,300,000 pounds) and the estimated carry-in on June 1, 2012 (180,970 pounds). This is the minimum amount that the Committee believes would be required to meet the anticipated 2012–2013 Native spearmint oil trade demand.

(D) *Total estimated allotment base for the 2012–2013 marketing year—2,324,945 pounds.* This figure represents a one percent increase over the revised 2011–2012 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—48.1 percent.* This percentage is computed by dividing the required salable quantity (1,119,030 pounds) by the total estimated allotment base (2,324,945 pounds).

(F) *Recommended allotment percentage—50 percent.* This is the Committee's recommendation based on the computed allotment percentage (48.1 percent), the average of the computed allotment percentage figures from the seven production area meetings (51.3 percent), and input from producers and handlers at the October 12, 2011, meeting. The actual recommendation of 50 percent is based on the Committee's determination that the computed percentage (48.1 percent) may not adequately supply the potential 2012–2013 Native spearmint oil market.

(G) *The Committee's recommended salable quantity—1,162,473 pounds.* This figure is the product of the recommended allotment percentage (50 percent) and the total estimated allotment base (2,324,945 pounds).

(H) *Estimated available supply for the 2012–2013 marketing year—1,343,443 pounds.* This figure is the sum of the 2012–2013 recommended salable quantity (1,162,473 pounds) and the estimated carry-in on June 1, 2012 (180,970 pounds).

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

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 782,413 pounds and 38 percent, and 1,162,473 pounds and 50 percent, respectively, are based on the goal of establishing and maintaining market stability. The Committee anticipates that this goal would be achieved by matching the available supply of each class of Spearmint oil to the estimated demand of such, thus avoiding extreme fluctuations in inventories and prices.

The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order makes the provision for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions. In addition, producers who produce more than their annual allotments during the 2012–2013 marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment, or, up until November 1, 2012, place it into the reserve pool to be released in the future in accordance with market needs.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. The average allotment percentage for the five most recent marketing years for Scotch spearmint oil is 36.5 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 49.3 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2012–2013 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2012–2013 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2012–2013 season in order to meet anticipated market demand.

Initial Regulatory Flexibility Analysis

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

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

There are eight spearmint oil handlers subject to regulation under the order, and approximately 32 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 15 of the 32 Scotch spearmint oil producers and 26 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

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

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

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

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

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

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

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil grower prices for the period 1980–2010 (when the marketing order was in effect) is 0.17 compared to 0.34 for the decade prior to the promulgation of the order (1970–79) and 0.48 for the prior 20-year period (1960–79). This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 48 percent of the 31-year average (1.89 million pounds from 1980 through 2010) and the largest crop was approximately 163 percent of the 31-year average. A key consequence is that, in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

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

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

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

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

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available. However, limited quantities of reserve oil are typically sold by one producer to another producer to fill

deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of these provisions need to be exercised prior to November 1 of each year.

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

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

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

The Committee estimated trade demand for the 2012–2013 marketing year for both classes of oil at 2,125,000 pounds, and that the expected combined carry-in will be 342,124 pounds. This results in a combined required salable quantity of 1,782,876 pounds. With volume control, sales by producers for the 2012–2013 marketing year would be limited to 1,944,886 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended allotment percentages, upon which 2012–2013 producer allotments are based, are 38 percent for Scotch and 50 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.19 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2012–2013 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

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

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

After computing the initial 32.2 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Given the moderately improving marketing conditions, there was consensus that the allotment percentage for 2012–2013 should be more than the percentage established for the 2011–2012 marketing year (36 percent). After considerable discussion, the eight-member committee unanimously determined that 782,413 pounds and 38 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2012–2013 marketing year.

The Committee was also able to reach a consensus regarding the level of volume control for Native spearmint oil. After first determining the computed allotment percentage at 48.1 percent, the Committee, in a vote of seven members in favor and one member opposed, recommended 1,162,473 pounds and 50 percent for the effective salable quantity and allotment percentage, respectively, for the 2012–2013 marketing year. The dissenting member felt that the salable quantity and allotment percentage for Native spearmint oil should be set at an unidentified higher level.

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

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2012–2013 could decline substantially below current levels.

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

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

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

This proposed rule would establish the salable quantities and allotment percentages of Class 1 (Scotch) spearmint oil and Class 3 (Native) spearmint oil produced in the Far West during the 2012–2013 marketing year. Accordingly, this proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules

that duplicate, overlap, or conflict with this proposed rule.

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

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 12, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2012–2013 fiscal period begins on June 1, 2012, and a final determination on the salable quantities and allotment percentages should be made prior to handlers purchasing from, or handling on behalf of, producers any oil for the ensuing marketing year; and (2) handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other salable quantities and allotment percentages issued in past years.

List of Subjects in 7 CFR Part 985

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

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

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

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

Authority: 7 U.S.C. 601–674.

2. A new § 985.231 is added to read as follows:

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

§ 985.231 Salable quantities and allotment percentages—2012–2013 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2012, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 782,413 pounds and an allotment percentage of 38 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,162,473 pounds and an allotment percentage of 50 percent.

Dated: February 28, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–5195 Filed 3–2–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0037]

RIN 1904–AC39

Energy Conservation Program: Energy Conservation Standard for Automatic Commercial Ice Makers

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

ACTION: Notice of extension of public comment period.

SUMMARY: On January 24, 2012, the U.S. Department of Energy (DOE) announced that it would hold a public meeting to discuss and receive comments on the product classes that DOE plans to analyze for purposes of establishing energy conservation standards for automatic commercial ice makers; the analytical framework, models, and tools that DOE is using to evaluate new and amended standards for these products; the results of preliminary analyses performed by DOE for these products; and potential energy conservation standard levels derived from these analyses that DOE could consider for these products. DOE also encouraged written comments on these subjects. This document announces an extension of the time period for submitting comments on the energy conservation standards notice of public meeting (NOPM) and availability of the preliminary technical support document (preliminary TSD) for automatic commercial ice makers. The comment period is extended to April 20, 2012.

DATES: The comment period for the energy conservation standards NOPM and preliminary TSD for automatic commercial ice makers, published on January 24, 2012 (77 FR 3404) is extended until April 22, 2012.

ADDRESSES: Any comments submitted must provide the appropriate docket number EERE–2010–BT–STD–0037 and/or RIN number 1904–AC39. Comments may be submitted using any of the following methods:

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

2. *Email: ACIM–2010–STD–0037@ee.doe.govmailto:RCAC–HP–2009–TP–0004@ee.doe.gov.* Include the docket number EERE–2010–BT–STD–0037 and/or RIN number 1904–AC39 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Preliminary TSD for Automatic Commercial Ice Makers, EERE–2010–BT–STD–0037, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone (202) 586–2945. If possible, please submit all items on CD. It is not necessary to include printed copies.

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

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, key rulemaking documents, public meeting presentations, attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The regulations.gov Web page will contain instructions on how to access all documents in the docket, including public comments.

The rulemaking Web page can be found at: *www.eere.energy.gov/buildings/appliance_standards/commercial/automatic_ice_making_equipment.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. Email: *Charles.Llenza@ee.doe.gov.*

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

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 24, 2012, DOE published a **Federal Register** notice announcing the availability of its preliminary technical support document for energy conservation standards for automatic commercial ice makers, as well as a public meeting to discuss and receive comment on the preliminary analysis. 77 FR 3404. The NOPM provides for the submission of comments by March 9, 2012. The public meeting to discuss the preliminary analysis was held on February 16, 2012. At the public meeting, commenters requested that DOE provide additional information not contained in the preliminary technical support document. DOE agreed to provide the additional information. In addition, DOE received several requests for an extension to the comment period to review this additional information. Therefore, DOE has determined that an extension of the public comment period is appropriate to allow for the review of the additional information, and is hereby extending the comment period. DOE will consider any comments received by April 22, 2012 to be timely.

Further Information on Submitting Comments

Under 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 two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. 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.

Issued in Washington, DC, on February 28, 2012.

Kathleen B. Hogan,

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

[FR Doc. 2012–5236 Filed 3–2–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 16

[Docket No.: FAA–2012–0176; Notice No. 12–01]

RIN 2120–AJ97

Rules of Practice for Federally-Assisted Airport Enforcement Proceedings (Retrospective Regulatory Review)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would update, simplify, and streamline rules of practice and procedure for filing and adjudicating complaints against federally-assisted airports. It would improve efficiency by enabling parties to file submissions with the Federal Aviation Administration (FAA) electronically, and by incorporating modern business practices into how the FAA handles complaints. This amendment is necessary to reflect changes in applicable laws and regulations, and to apply lessons learned since the existing rules were implemented in 1996.

DATES: Send comments on or before May 4, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0176 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: For technical or legal questions concerning this action, contact Jessie Di Gregory, Federal Aviation Administration, Office of the Chief Counsel, Airport Law Branch (AGC–610), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3199; fax (202) 267–5769; email: *Jessie.DiGregory@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Sections 46101, ''Complaint and Investigations'' and 46104, ''Evidence,'' and Part B, Section 47122, ''Administrative.'' Under these sections, Congress provided for the FAA

to prescribe regulations for practices, methods, and procedures to hear complaints concerning compliance by federally-assisted airports and carry out investigations and conduct proceedings in a way conducive to justice and the proper dispatch of business. This rulemaking is within the scope of that authority because it would amend rules necessary to investigate, hear, and provide rulings on matters related to federally-assisted airport conduct.

I. Overview of the Proposed Rule

The FAA is required by statute to adjudicate complaints on matters within the agency's authority (49 U.S.C. 46014). Title 14 CFR part 16, Rules of Practice for Federally-Assisted Airport Enforcement Proceedings (Part 16), provides a process for investigating and adjudicating complaints against sponsors for violation of federal obligations. For this NPRM, a sponsor is a recipient of federal assistance, usually an airport operator. This rulemaking would improve the efficiency of Part 16 proceedings by providing an electronic filing alternative, opportunities for sponsors to seek early disposition of complaints in certain cases, and clarification of processes already described in the rule. It would affect those parties involved in filing and responding to formal complaints. It would also affect the FAA offices involved in investigating and adjudicating those complaints.

The FAA, sponsors, aeronautical users, and other stakeholders have 15 years of experience with Part 16 as implemented in 1996.[1] In general, Part 16 has been a useful process for resolving complaints regarding sponsor compliance. The FAA does not intend to change the basic features of the process. Rather, the FAA has identified updates to Part 16 that could improve the process and reduce time required to address certain cases, based on agency and stakeholder lessons learned.

The FAA believes the agency, sponsors, aeronautical users, and other stakeholders in Part 16 proceedings would benefit from adding the following to the rule:

- Procedures for concluding the investigation by ''summary judgment'' or dismissal without an answer by the sponsor.
- Termination of complainant standing in certain cases where the FAA finds the sponsor in noncompliance on all issues raised in the complaint.
- Optional electronic filing procedures.
- Procedures for filing complaints under Title 49 CFR part 23, Participation of Disadvantaged Business Enterprises (DBEs) in Airport Concessions, and 49 CFR part 26, Participation by DBEs in Department of Transportation (DOT) Financial Assistance Programs.

In addition, the FAA believes it would be helpful to clarify existing language in Part 16 that addresses [2]—

- Intervention and other participation.
- The process for ordering corrective action for noncompliant sponsors.
- Processes involving the Director, including procedures for seeking rehearing of Director's Determinations upon a showing of good cause.
- Standard of Proof and Burden of Proof requirements.
- Standards for raising new issues on appeal to the Associate Administrator.
- Consent Orders.
- Requests for testimony of agency employees.
- Processes involving the Associate Administrator, including procedures for seeking rehearing of Final Agency Decisions upon a showing of good cause.
- Transfer of responsibility for decision-making for civil rights cases.
- Availability of Judicial Review.
- Extension of the time period for filing pleadings by mail.

Finally, the FAA is proposing minor updates to terminology and organization within Part 16 as part of its revision. These changes are necessary to streamline the rule and reflect current practices.

The FAA expects benefits of these proposed changes to include a decrease in both time spent and volume of paper documents required to process Part 16 complaints.

II. Background

A. Current Part 16 Procedures

Part 16 provides a specific procedure for filing and adjudicating formal complaints against sponsors where these complaints involve violations of federal obligations incurred as a condition of receiving federal assistance. Federal assistance is either a grant from the FAA, or transferred surplus or non-surplus federal property received by a sponsor for airport purposes.

Sponsors agree to a list of standard conditions, or grant assurances, when accepting a grant.[3] Similar requirements also attach to the transfer of federal surplus property to sponsors and are often specified as obligations in surplus property deeds.[4] Persons directly and substantially affected by an alleged violation of one of these assurances and/or obligations may file a complaint under Part 16 for resolution.[5] The sponsor must file an answer and may include a motion to dismiss the complaint in the answer. The complainant may then file a reply to the answer. The sponsor may then file a rebuttal. Through this process the complainant and the sponsor each have the opportunity to file written statements with the FAA.

The FAA Administrator has delegated authority to take action and issue orders for airport matters to the FAA Chief Counsel and the Associate Administrator for Airports.[6] The authority includes the responsibility of investigating and adjudicating complaints against sponsors. In practice, the Airports and Environmental Law Division (AGC–600), the Airports line of business' Office of Airport Compliance and Management Analysis (ACO), and, in cases involving alleged civil rights violations, the FAA Office of Civil Rights (ACR), review the complaint.[7] The Airports and Environmental Law Division reviews the complaint to ensure it meets the basic filing and docketing requirements of Part 16.[8] The Airports and Environmental Law Division coordinates its docketing or dismissal with the Office of Airport Compliance and Management Analysis. The Airports and Environmental Law Division also reviews Director's Determinations and Final Agency Decisions for legal sufficiency. A legal sufficiency review assesses legal standards and includes consideration of whether the document substantially satisfies applicable procedural and regulatory requirements.

The Director of the Office of Airport Compliance and Management Analysis,

[1] 61 FR 53998, October 16, 1996.

[2] This list is one of general introductions. It is not intended to explain each issue in detail.

[3] 49 U.S.C. 47101 *et seq.*

[4] 49 U.S.C. 47151–47153.

[5] A person filing under the authority provided in 49 CFR part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, § 26.105(c) need not be directly and substantially affected by the sponsor's alleged violation.

[6] FAA Order 1100.154A, Delegations of Authority, para. 6.e.(1), June 12, 1990.

[7] The Airports Line of Business' Office of Airport Safety and Standards (AAS) delegated certain authority involving Part 16 complaints that allege civil rights violations to ACR through a 2002 Memorandum of Understanding (MOU) from the AAS Director to the Deputy Assistant Administrator for Civil Rights. See *Albuquerque Valet Service, et al.,* v. *City of Albuquerque,* FAA Docket No. 16–01–01, at 3 n.2 (Director's Determination August 2, 2002).

[8] See 14 CFR part 16, subparts A, B, and C.

the Deputy Assistant Administrator for the Office of Civil Rights, or their respective designee (''Director'') either dismisses the complaint, or conducts an investigation and issues a Director's Determination. If the Director's Determination includes a finding of noncompliance, it generally requires corrective action to return the sponsor to compliance. A sponsor may be entitled to a hearing on the Director's Determination. Either party may appeal the Director's Determination, or, if a hearing is held, the hearing officer's initial decision. A party makes such an appeal to the Associate Administrator for Airports or the Assistant Administrator for Civil Rights, as appropriate, for issuance of a Final Agency Decision. A party may then file an appeal of the Final Agency Decision to a United States Court of Appeals.

B. History

The FAA published an NPRM in 1994 (the 1994 NPRM) first proposing to set up specific rules of practice for the filing of complaints and adjudication of compliance matters involving federally-assisted airports.[9] The resulting Final Rule, published in 1996 (the 1996 Final Rule), addressed exclusively airport compliance matters arising under the Airport and Airway Improvement Act (AAIA) of 1982, as amended and recodified; certain airport-related provisions of the Federal Aviation Act of 1958, as amended; the Surplus Property Act, as amended; predecessors to those acts; and rules, grant agreements, and documents of conveyance issued or made under those acts.[10] Before 1996, the FAA handled complaints filed against sponsors under the agency's general complaint procedures in 14 CFR part 13, Investigative and Enforcement Procedures (Part 13). The FAA had found these processes to be cumbersome and inefficient for addressing complaints against airports involving financial assistance matters. Amending Part 13 and establishing Part 16 provided a dedicated procedure to the airport community for resolution of such complaints. The informal complaint procedures of Part 13 (§ 13.1), however, may be utilized to facilitate a Part 16 complainant meeting the pre-complaint resolution requirements of 14 CFR 16.21. Under that section, potential complainants are required to engage in good faith efforts to resolve the disputed matter informally with potentially responsible respondents before filing a formal Part 16 complaint. Informal resolution may include mediation, arbitration, use of a dispute resolution board, or other form of third party assistance, including assistance from the responsible FAA ADO or regional airports division. When filing a Part 16 complaint, the complainant must certify that good faith efforts have been made to achieve informal resolution. In our experience, the informal resolution process has been effective in bringing both parties together in a timely manner to resolve differences and misunderstandings about the rights and responsibilities of the airport sponsor and the aeronautical user.

In 1999, DOT cited the FAA's Part 16 procedures when it established 49 CFR part 26, Participation by Disadvantaged Business Enterprises (DBEs), in DOT Financial Assistance Programs.[11] Title 49 CFR 26.105(c) allows any person who knows of a violation of this part by a recipient of FAA funds to file a complaint under 14 CFR part 16. A person filing a Part 16 complaint under the authority provided in 49 CFR 26.105(c) is accorded the same processes as any party filing under Part 16, but need not be directly and substantially affected by the sponsor's alleged violation.

On July 5, 2001, the Director of Airport Safety and Standards issued a Notice of Limited Delegation in which he transferred authority to the Associate Administrator for Civil Rights to serve as ''Director'' in accordance with 14 CFR 16.31 for a specific case.[12] The Notice went on to say that most Part 16 complaints address issues within the Director of Airport Safety and Standards' expertise, but that complaints filed by DBEs under 49 CFR parts 23 and 26 are more properly handled by the Office of Civil Rights because of that office's expertise in such matters. The Notice also specifically limited the delegation to the subject case, although it concluded by stating that a final delegation of authority would be included in an upcoming amendment to 14 CFR part 16.

Subsequently, on February 22, 2002, the Director of the Office of Airport Safety and Standards and the Associate Administrator for Airports each issued memoranda delegating blanket authority in civil rights violations to the Deputy Assistant Administrator for Civil Rights and the Assistant Administrator for Civil Rights, respectively. These memoranda delegated authority to prepare and issue Director's Determinations pursuant to 14 CFR 16.31 and final decisions pursuant to 14 CFR 16.33 and 16.241(b)–(f), respectively.

Section 16.3 currently defines ''Director'' to be the Director of the Office of Airport Safety and Standards. The Director holds primary responsibility for issuing decisions in response to Part 16 complaints. In 2008, the FAA Administrator created the Office of Airport Compliance and Field Operations, and reassigned responsibility for adjudication of complaints filed against sponsors under Part 16 to that organization. The goal of these changes was to allow the Office of Airport Safety and Standards to provide greater emphasis on core safety and engineering mission requirements.[13] With added changes to the FAA Airports organization in 2011, the Administrator assigned the compliance function to the newly reorganized Office of Airport Compliance and Management Analysis.[14]

Various stakeholders with experience filing or responding to Part 16 complaints have expressed opinions to the FAA on how to improve the complaint adjudication process. To obtain initial input early in 2011 as the agency considered pursuing rulemaking, the FAA held ''listening sessions'' with stakeholder organizations whose members have been most affected by Part 16 proceedings. The FAA met with representatives from the following associations:

- Airports Council International-North America (ACI–NA), whose member airport operators may be the subject of complaints and therefore be required to respond under Part 16 (February 2011);
- National Air Transportation Association (NATA), whose member aviation service businesses such as fixed base operators (FBOs), charter providers, and aircraft management companies are often involved in Part 16 complaints (March 2011); and
- Aircraft Owners and Pilots Association (AOPA), whose member general aviation operators are also often involved in Part 16 complaints (April 2011).

The FAA has considered stakeholder recommendations as it has developed proposed changes to Part 16, and looks forward to additional input from public comments made in response to this proposed rule.

The intent of Part 16 was to expedite substantially the handling and disposition of airport-related

[9] 59 FR 29880, June 9, 1994.

[10] 61 FR 53998, October 16, 1996.

[11] 64 FR 5126, February 2, 1999.

[12] See *Albuquerque Valet Service, et al.,* v. *City of Albuquerque,* FAA Docket No. 16–01–01, at 3 n.2 (Director's Determination August 2, 2002).

[13] FAA Notice 1100.318, para. 4, April 29, 2008.

[14] FAA Notice 1100.333, para. 5, May 6, 2011.

complaints. The FAA's experience with the use of Part 16 has been positive, in that the rule improved on the process available to complainants under Part 13 before Part 16's implementation. While decisions sometimes take longer than the basic time frames provided in Part 16 for many reasons, there is no backlog of formal complaints awaiting resolution.

C. Statement of the Problem

Part 16 has not been updated since its original implementation in 1996. As described earlier in this preamble, existing Part 16 processes have worked well but are in need of revision based on agency and stakeholder experience during the past 15 years. The FAA proposes adding new processes and revising existing processes to clarify Part 16 and apply lessons learned to provide for more efficient use of agency and stakeholder time and resources during complaint proceedings.

III. Discussion of the Proposal

A. Motions To Dismiss in Lieu of Answers and Loss of Standing by Prevailing Complainant

1. Motions for Summary Judgment or Dismissal

Current § 16.23(d) requires the respondent to file an answer to any complaint not dismissed by the FAA under § 16.25, within 20 days of the date of service of the FAA notification of docketing. Under the present rule, it is not worthwhile for the respondent to move to dismiss a complaint prior to preparing an answer because the submission of a motion to dismiss does not suspend the 20-day time-limit for filing an answer.[15] The FAA has found that the respondent usually begins the sometimes costly and time-consuming effort of drafting an answer, complete with supporting documentation, at the same time as it drafts the motion to dismiss. The practical result is that, as suggested by current § 16.23(j), the motion to dismiss and the answer are almost always submitted at the same time. This practice is inconsistent with that of other agencies and with the Federal Rules of Civil Procedure.[16] For example, 49 CFR 821.17 of the National Transportation Safety Board's (NTSB) Rules of Practice in Air Safety Proceedings, found at 49 CFR 821.1, *et seq.,* provides an opportunity for the NTSB to make a ruling through a summary judgment or grant a motion to dismiss.[17]

In addition to lacking consistency with other agency rules, the FAA believes that the current rule has required the full investigation process for some complaints that clearly lacked sufficient legal basis. The volume of complaints filed under Part 16 (231 through March 2011) creates a significant workload for the agency and for respondents alike.

Sponsor representatives in Part 16 actions have indicated to the FAA that the full process under the current rule is burdensome in cases where complaints may be considered frivolous. They have specifically expressed concern about complaints they believe were filed merely to harass, intimidate, or cause financial hardship to a respondent. These stakeholders have suggested that a responsive motion could be used to dispose of frivolous complaints.

The FAA recognizes that ''frivolous'' is in the eye of the beholder. That said, it is not consistent with the intent of Part 16 or good government to require full response and investigation of clearly frivolous complaints. Although such complaints are clearly subject to dismissal under §§ 16.23, 16.25, and 16.27, the FAA recognizes that there may be differences of opinion about their applicability. Accordingly, the FAA believes it is appropriate to bring the Part 16 processes more in line with the Federal Rules of Civil Procedure[18] and other agencies' practices and permit respondents' some recourse and opportunity for ''self-help,'' consistent with adequate due process. Therefore, the FAA is proposing a new § 16.26, Motions to dismiss and motions for summary judgment. These proposed rules could relieve the respondent and the agency from completing a full investigative process in certain cases by allowing the respondent to file a motion to dismiss or a motion for summary judgment in lieu of preparing an answer. Under proposed § 16.26(e), the time-limits for filing an answer would begin to run after the Director's decision regarding the motion for dismissal or summary judgment. Under proposed § 16.26(f), the time-limits for filing an answer would begin to run, in cases where the Director does not act on the motion, within 30 days of the date an answer to a motion is due under proposed § 16.26. The proposed change provides the FAA, the complainant, and the respondent an opportunity to narrow the issues, and allows the FAA to conserve resources by investigating only legitimate, non-frivolous grant compliance issues.

Specifically, proposed § 16.26(a) includes a process for summary judgment whereby the respondent can request, and the FAA can issue, a decision as a matter of law when there are no genuine issues of material fact. Proposed § 16.26(b) includes a process whereby the respondent can file, and the FAA can grant or deny, a motion to dismiss a complaint that fails to state a claim or where the claim is legally inadequate because the facts do not support the claim. Proposed new §§ 16.26(c)–(g) provide more requirements in these cases.

2. Termination of Complainant Standing

The FAA believes that a complainant who has prevailed on all issues at the Director's decision stage has received due process. Therefore, the FAA is proposing to amend § 16.109 so that a complainant may not appeal a Director's Determination that has found a respondent in noncompliance on all issues. Current § 16.109 does not address the continuing participation of a complainant when the Director finds a sponsor in noncompliance on all issues identified in the initial complaint. It is inconsistent with the process for a complainant to appeal an action in which the complainant has prevailed. Such appeals would produce unnecessary workload for the agency and respondents. When a complainant prevails at the Director's Determination level, the objectives of the Part 16 process have been met because the complainant has identified sponsor noncompliance and the FAA has agreed through issuance of a Director's Determination.

In the 1994 NPRM, the FAA proposed that the respondent and the agency would be parties to the hearing and named in the hearing order. The FAA received comments stating that the complainant should also be a party to the hearing. The National Business Aviation Association (NBAA) argued that ''the complainant's participation will help develop the record of the case.''[19] As a result, the final rule allowed the complainant to be a party to the hearing with the respondent and the agency.[20] In the preamble to the final rule, the FAA stated:

[15] See § 16.19(a).

[16] Fed. R. Civ. P. 56.

[17] See also National Highway Traffic Safety Administration's Adjudicative Procedures at 49 CFR 511.25(d)–(e), and Federal Trade Commission Rules of Practice for Adjudicative Proceedings at 16 CFR 3.24.

[18] Fed. R. Civ. P. 56.

[19] 61 FR 53998–53999, October 16, 1996.

[20] See 61 FR 53998–53999, October 16, 1996 and 14 CFR 16.203(b)(1).

Under § 16.31(d), a case proceeds to a hearing only after the FAA has found against the respondent in an initial determination that proposes the issuance of a compliance order. Thus, at the hearing the FAA has the burden of proof to establish the validity of its initial determination, including the proposed order of compliance under § 16.109. The respondent is a party to the hearing who seeks reversal of the FAA's initial determination. Although, a complainant's status as an airport user alone does not give rise to a sufficient property interests to justify party status as a matter of right, party status for the complainant will permit it to have an opportunity to assist in the development of the factual record as pointed out by NBAA. In addition, providing automatic party status will avoid burdening the hearing officer and parties with routine requests for intervention by complainant. The rule provides the hearing officer with ample powers to control the conduct of the hearing and to assure that complainant's participation does not unduly delay the proceedings.[21]

Since the enactment of Part 16, there has been confusion about the role of the complainant on appeal, given that at the hearing stage, the FAA has identified the noncompliance and taken over the role of complainant. The agency therefore becomes the prosecutor in a proceeding before a hearing officer. The FAA has the burden of proof to establish the validity of its initial determination, including the proposed order of compliance. Therefore, the FAA is clarifying that the role of the complainant at the hearing stage is limited to assisting, as needed, in the development of the factual record.[22]

B. Optional Electronic Filing Procedures

The existing Part 16 process does not include provisions for electronic filing. Based on the success of an electronic filing test program that the FAA started in 2010, the effective implementation of such filing programs by other federal agencies, and the DOT's implementation of an electronic Part 16 Docket through regulations.gov, the FAA is proposing a new § 16.13(h) to add an electronic filing alternative for parties to use when filing pleadings as part of a Part 16 proceeding. In addition, the FAA is proposing new definitions for ''electronic filing'' and ''writing or written,'' and amended language for the definition of ''mail'' in § 16.3.

Use of electronic filing would be an alternative rather than a requirement. In most cases, the electronic filing process would begin at the complaint filing stage for the complainant and at the answer stage for the respondent. The proposed rule would continue to require the complainant to serve the respondent with the initial complaint by personal delivery, facsimile, or mail unless the respondent has previously agreed in writing to electronic filing. Any party that has agreed to file electronically would be able to later opt out of the electronic filing process. In these cases, the proposed rule would require all other parties to then serve the party that has opted out by personal delivery, facsimile, or mail. Finally, unless the FAA provides specific notice that it will not accept electronic service, any party could file pleadings electronically with the FAA docket clerk at any stage of the Part 16 process except the hearing stage. At the hearing stage, a hearing officer could direct the parties to serve pleadings by another means.

The FAA expects that introducing the proposed electronic filing option would save participating parties and the FAA both time and money by foregoing the need to print documents on paper and then send them by delivery or mail. The new electronic filing procedures would expedite the process, reduce paper file storage requirements, and help in document transmittal and routing. The FAA also expects to reduce administrative costs because documents submitted electronically are more easily placed in the FAA's electronic docket on regulations.gov.

C. Applicability of Part 16 Proceedings for Complaints Initiated Under 49 CFR Part 26

The present rule does not reference Disadvantaged Business Enterprises' (DBEs) rights to file complaints under the Part 16 process. As described in section II.B of this preamble, the current rule predates the 1999 implementation of 49 CFR part 26, Participation by Disadvantaged Business Enterprises in DOT Financial Assistance Programs.[23] Present Part 16 does not describe how persons who are eligible to file a complaint in accordance with 49 CFR 26.105(c) may do so under Part 16, nor does it make clear that such a person does not have to be directly and substantially affected by the alleged violation to file a complaint.

To align with 49 CFR part 26, the FAA is proposing to change 14 CFR part 16 by—

- Revising the definition of *Complaint* in § 16.3 to include a document filed by a person under 49 CFR 26.105(c) against a recipient of FAA funds alleged to have violated a provision of 49 CFR parts 23 and/or 26.
- Adding new §§ 16.21(a) and (b) that would relieve persons filing under 49 CFR 26.105(c) from the informal resolution process required by this section.
- Adding language in § 16.23(a) to clarify the complaint procedures for complainants filing under 49 CFR 26.105(c).
- Adding language in § 16.23(b)(4) to exclude a complainant filing under 49 CFR 26.105(c) from the requirement to describe how the respondent directly and substantially affected him or her by ''things done or omitted to be done.''

D. Proposals To Streamline and Clarify Existing Processes

1. Intervention and Other Participation

Current § 16.207 addresses third-party intervention and other participation in Part 16 proceedings. This section has been generally effective, but FAA experience has led the agency to identify several updates that would improve the intervention process and reflect current practices. First, the current rule does not limit third-party participation to the hearing stage, nor does it restrict such participation to the discretion of the hearing officer. The FAA therefore proposes to add a new § 16.207(a) to reflect this. This addition would compel the redesignation of current paragraphs (a) through (d) as newly redesignated paragraphs (b) through (e). The FAA also proposes to recognize specifically the hearing officer's discretion over participation at this stage by replacing ''FAA'' with ''hearing officer'' in current § 16.207(d) (which the agency is proposing to redesignate as § 16.207(e)).

The FAA requires, in practice, any party that wishes to intervene in Part 16 proceedings to do so with a written motion. To make this practice transparent, the FAA is proposing to add the word ''written'' to the language in current § 16.207(a), which it is proposing to also redesignate as § 16.207(b).

Currently, § 16.207(b) states that a person may be granted leave to intervene if that person has a property or financial interest that may not be addressed adequately by the parties. The FAA believes that, as written, parties may infer that the intervenor may use the Part 16 process for monetary gains. This inference would be wrong. In practice, neither an intervenor nor a complainant should expect monetary gains, or, equitable or declaratory relief through the Part 16 process.

[21] 61 FR 53998–53999, October 16, 1996.

[22] See *Centennial Express Airlines* v. *Arapahoe County Public Airport Authority,* FAA Docket No. 16–98–05, at 10 (Final Agency Decision, February 18, 1999) (''the [Part 16] Rules of Practice give Complainants party status only to assist the FAA in the development of the factual record.'').

[23] 64 FR 5126, February 2, 1999.

The FAA emphasizes that the Part 16 process is not a means of providing compensation to complainants for damages incurred due to alleged sponsor violations. The purpose of the Part 16 process, as established in the 1996 rule, has been to address sponsor noncompliance with federal obligations. Monetary relief, equitable relief, and declaratory judgment have not been available to complainants as remedies. Yet, some complainants have included in their complaints specific requests for monetary or declaratory relief under the current rule. Part 16 findings of noncompliance cannot and do not result in the award of monetary damages.[24] The FAA proposes to clarify this point by amending language in current § 16.207(b) to replace ''if the person has a property or financial interest that may not be addressed adequately by the parties'' with ''if the person has an interest that will benefit the proceedings,'' as well as redesignating this paragraph as § 16.207(c).

2. Corrective Action Plans

Presently, Part 16 identifies two remedies available for the FAA to correct a noncompliant sponsor. First, § 16.109 describes procedures to terminate or prohibit federal grants, but does not address corrective action. Second, current §§ 16.241(c) and (f)(3) provide for the Associate Administrator to make a statement of corrective action, if appropriate, and identifies sanctions for continued noncompliance. The FAA has found that corrective action can be effective at the Director/initial decision level, but also could benefit from clarified requirements. The FAA proposes to allow the Director to have the same authority as the Associate Administrator to require submission and completion of a Corrective Action Plan. These changes would expedite the benefits of corrective action.

Proposed new §§ 16.109(c) and 16.245(d)(1) specify that the Director would be able to either enforce a Corrective Action Plan, or begin proceedings to revoke or deny the respondent's application for federal assistance. If a respondent fails to complete the Corrective Action Plan requirement to the satisfaction of the FAA, proposed § 16.109(d) would allow the FAA to begin proceedings to revoke or deny the sponsor's application for federal assistance. Proposed § 16.109(f) would give the process finality when a sponsor has fully complied with a Corrective Action Plan and/or the sponsor has corrected the areas of noncompliance by allowing the Director to terminate the proceedings.

In addition, the FAA proposes to add language to § 16.33 to address an unusual situation concerning the interaction of a proposed Corrective Action Plan and an appeal of a Director's Determination. This situation occurs when the agency finds against the sponsor in its initial determination and proceeds to work with the sponsor on the Corrective Action Plan, but at the same time the sponsor appeals the Director's Determination to the Associate Administrator for Airports. It results in confusion when on the one hand, the agency is working with the sponsor on correcting its behavior, and on the other hand, the sponsor is challenging the legal basis for the Corrective Action Plan and alleging error on the Director's part. To avoid this situation, the FAA is proposing to hold any Corrective Action Plan in abeyance until the appeal is resolved and/or a final order is issued.

3. Processes Involving the Director

The FAA has seen the need to clarify the role of the Director in certain areas. Section 16.11 states, in part, that the Director will conduct investigations, issue orders, and take such other actions as are necessary to fulfill the purposes of this part. It goes on to address the Director's authority to set time limits. The FAA has experienced situations where a party has continued to file documents with the Director after the issuance of a Director's Determination. Most of these documents challenge the determination and some ask for reconsideration. Some administrative processes used by other agencies allow the official making an initial decision to retain jurisdiction of a case and address the parties' concerns after rendering a decision.[25] However, it is the practice for the FAA to terminate the initial stage with the issuance of the Director's Determination and then to allow the Associate Administrator to consider any challenges to the Director's Determination. Part 16 does not presently have a process that specifically allows a party to ask for reconsideration of an initial decision. Allowing the Associate Administrator to take up any challenges to the Director's Determination starting at the issuance of the Director's Determination would adequately address parties' interests and uphold due process.

Therefore, proposed § 16.11(c) provides that the Director's jurisdiction terminates at the issuance of a Director's Determination, except where the determination contains a Corrective Action Plan and the sponsor does not appeal the determination.

The FAA is also proposing to change the section title to better describe the contents of § 16.11. The authority described in this section is broader than that described by ''Expedition and other modification of process,'' and would be better described by changing this section heading to ''General processes.''

Additionally, the FAA finds it necessary to clarify whether or not the Director may be petitioned for rehearing after issuing his or her Director's Determination. The 1994 NPRM preamble indicates that the FAA did not intend to make rehearings available to the parties immediately after issuance of the Director's Determination. However, the 1996 Final Rule makes no mention of rehearings at that stage in either the regulatory text or the preamble, which dealt only with the availability of appeals to the Associate Administrator.[26] In order to increase clarity and transparency, the FAA is proposing language in new § 16.31(e) to preclude requests for ''rehearing, reargument, reconsideration, or modification'' at this stage without a showing of ''good cause.''

Good cause is a ''substantial or legally sufficient reason for doing something * * * 'good cause' might include the existence of a fraud, lack of notice to the parties or new evidence.'' [27] It is a strict standard under which rehearing, reargument or reconsideration is not granted lightly.[28] The FAA believes that full reconsideration after the Director's Determination stage is unnecessary because of the availability of an appeal to the Associate Administrator. This position is consistent with the 1994 NPRM's intent to ''[p]rohibit interlocutory appeals and requests for reconsideration, and focus instead on an effective appeals process.'' [29]

4. Standard of Proof and Burden of Proof

The present rule addresses Standard of Proof and Burden of Proof only as they relate to hearing officer actions, in §§ 16.227 and 16.229 respectively. The present rule does not provide a Standard of Proof and a Burden of Proof that the Director and Associate Administrator must utilize. However, it has been the practice of the Director and the Associate Administrator to use the

[24] See, e.g., *Davis* v. *Jackson Municipal Airport,* FAA Docket No. 16–10–01, at 17 (Director's Determination January 18, 2011).

[25] See, e.g., 49 CFR 821.1 *et seq.*

[26] 59 FR 29880, June 9, 1994, and 61 FR 53998, 54002, October 16, 1996.

[27] Steven H. Gifis, *Law Dictionary* 91 (1975).

[28] See Steven H. Gifis, *Law Dictionary* 91 (1975), see also Black's Law Dictionary (9th ed. 2009).

[29] 59 FR 29880, 29882, June 9, 1994.

same Standard of Proof and Burden of Proof throughout all stages of Part 16 proceedings, even though inconsistent treatment is permitted under the current rules. This inconsistent treatment is neither the intent nor the practice of the agency. In order to apply the same requirements throughout all stages of Part 16 proceedings, the agency proposes to add new § 16.31(b) addressing Standard of Proof, and new §§ 16.23(k) and 16.33(e) addressing Burden of Proof.

5. Limitation of Issues for Consideration Upon Appeal

Currently, § 16.33(d) does not prescribe any limitations for the scope of the proceedings, and does not specifically prevent parties from raising new issues at the review stage. Parties in past cases have attempted to introduce new issues, offer additional evidence, and expand the scope of the complaint at the appeal stage. Such practices have delayed the issuance of Final Agency Decisions and have unfairly required parties responding to an appeal to defend extraneous claims.

Other agencies limit the scope of an appeal, presumably for reasons of economy and fairness.[30] The FAA recognizes that such limits are useful, and proposes to limit issues for consideration on appeal by adding new sections addressing proceedings with and without hearings. Therefore, under §§ 16.33(e) and 16.245(e), if the Associate Administrator sustains the Director or the hearing officer, the Associate Administrator would limit review to whether or not—

- The findings of fact are each supported by a preponderance of reliable, probative and substantial evidence contained in the record;
- The conclusions are made in accordance with law, precedent, and policy;
- The questions on appeal are substantial; and
- Any prejudicial errors have occurred.

Further, under proposed §§ 16.33(f) and 16.245(f), the Associate Administrator would not consider additional issues or evidence without a finding of good cause.

[30] Title 49 CFR part 821, NTSB Rules of Practice in Air Safety Proceedings, include such limitations in § 821.49, Issues on appeal. Title 49 CFR part 1503, Transportation Security Administration Investigative and Enforcement Proceedings, include such limitations in § 1503.657(b), Appeal from Initial Decision, Issues on Appeal.

6. Provision for Consent Orders at the Non-Hearing Stage

Present § 16.243 provides an opportunity for parties to settle a case by entering into a consent order at the hearing stage of a proceeding. In practice, parties have entered into consent orders with the approval of the FAA at the non-hearing stage as well. This has proven to be a viable way to settle cases. Therefore, the FAA proposes to add a new § 16.34 to explicitly provide for this practice. The new process for the non-hearing stage in proposed § 16.34 would be consistent with the process in current § 16.243 for the hearing stage.

7. Limitations to the Deposition of FAA Employees

Current § 16.215 addresses the general requirements for depositions at the hearing stage of Part 16 proceedings. It does not specifically consider the deposition of agency employees. The FAA believes that this omission has provided an opportunity for parties to acquire technical data from FAA employees to support their case, rather than obtaining expert witness support. Proposed new § 16.215(e) would remove this opportunity. Specifically, new § 16.215(e)(1) would align Part 16 with the provisions of 49 CFR part 9, Testimony of Employees of the Department and Production of Records in Legal Proceedings. New § 16.215(e)(2) would allow parties to depose agency employees only with the specific written permission of the Chief Counsel.

8. Processes Involving the Associate Administrator

The FAA believes that sections in current Part 16 pertaining to the Associate Administrator's authority and review would benefit from consolidation and clarification, especially with respect to the authority of the Associate Administrator in ordering corrective action after a finding of noncompliance. The FAA is proposing the following changes:

- Add new § 16.33(f) clarifying the requirements for submission of a petition to consider new evidence on appeal to the Associate Administrator to show ''good cause.'' [31]
- Remove the Subpart G heading label ''Initial Decisions, Orders and Appeals'' from before §§ 16.241 through 16.243, since these sections relate to the processes concerning hearings and are therefore more fittingly included in Subpart F, Hearings.

[31] See Steven H. Gifis, *Law Dictionary* 91 (1975), see also Black's Law Dictionary (9th ed. 2009).

- Add a new § 16.245, Associate Administrator Review after a Hearing, to Subpart F, Hearings. New paragraphs would include:
  - § 16.245(a), providing for permanent transfer of authority in civil rights cases to the FAA Assistant Administrator for Civil Rights (as described in section III.D.10 of this preamble);
  - § 16.245(b), providing a more complete description of the Administrator's Authority to change a hearing officer's initial decision or remand it to the hearing officer if the Associate Administrator finds that the hearing officer erred;
  - § 16.245(c), describing the Associate Administrator's authority after a hearing, as adopted from current § 16.241(f) with an increase of the time limit from 30 to 60 days for the Associate Administrator to issue a Final Agency Decision (to reflect current practice and resources);
  - § 16.245(d), Orders of Compliance, explaining Associate Administrator authority to impose a Corrective Action Plan when the FAA finds a sponsor in violation (proposed § 16.245(d)(1)), and to remand the case to the Director for enforcement of the Corrective Action Plan (proposed § 16.245(d)(2)) (see also section III.D.2 of this preamble);
  - §§ 16.245(e) and (f), limiting issues that the Associate Administrator will consider upon appeal (as described in section III.D.5 of this preamble); and
  - § 16.245(g), providing for appeal of Final Agency Decisions issued by the Associate Administrator in accordance with existing Subpart H, Judicial review (which the FAA proposes to redesignate as Subpart G).

9. Transfer of Responsibility for Civil Rights Cases

As discussed at several points in this preamble, the present rule predates the 1999 DOT amendment to 49 CFR parts 23 and 26 that provided for DBE filing of complaints under 14 CFR part 16, and does not provide specific direction for complaints involving civil rights issues. 49 CFR part 26 is designed to help ensure that there is a level playing field for socially and economically disadvantaged firms to compete for airport contracting and concession opportunities.

Section III.C of this preamble specifically addresses the process for complainants filing under 49 CFR parts 23 and 26. However, the FAA also believes the new rule should reflect the agency practice of transferring the investigation and adjudication of part 16 complaints involving civil rights issues to the Office of Civil Rights. The FAA

recognizes that its Office of Civil Rights is best suited to issue decisions in part 16 cases filed under 49 CFR parts 23 and 26.[32] The FAA would formalize the authority of the FAA Office of Airports to transfer appropriate complaints, in whole or in part, to the Office of Civil Rights by amending the definitions of Associate Administrator and Director in current § 16.3, and adding new §§ 16.11(d), 16.33(a), and 16.245(a) to address the involvement of the Office of Civil Rights throughout the proceedings.

10. Availability of Judicial Review

Presently, § 16.247(a) provides that a person may seek judicial review of a final decision and order of the Associate Administrator. Section 16.247(b) states the decisions and determinations that do not constitute a final agency order. Although § 16.25 states that complaints may be dismissed with prejudice, in whole or in part for three reasons, the regulatory text is silent about whether such partial dismissals are interlocutory orders or are final orders subject to immediate judicial review. The discussion of dismissals under § 16.25 in the preamble to the 1996 Final Rule states:

> [b]esides dismissal of complaints that clearly do not state a cause of action, or those that do not come within the jurisdiction of the Administrator, a complaint may also be dismissed if the complainant lacks standing to file the complaint under §§ 16.3 and 16.23. As a final order of the agency, a dismissal with prejudice would be appealable to a United States Court of Appeals.[33]

Similarly, the discussion in the preamble to the 1994 NPRM states:

> [c]omplaints that clearly do not state a cause of action that warrants investigation by the jurisdiction of the Administrator, as well as those that do not come within the jurisdiction of the Administrator under the authorities set forth in this part, would be dismissed with prejudice, within 20 days after receipt of the complaint. As a final order of the agency, a dismissal would be appealable to a United States Court of Appeals.[34]

An appeal to the Associate Administrator for Airports from an order of dismissal in these circumstances is simply not provided for.

The FAA saves time and resources by permitting direct judicial review of dismissals based upon the types of issues set forth in § 16.25. The parties similarly save time and resources. Moreover, that position is consistent with decisions of United States Courts of Appeals, which have found that certain orders of administrative agencies may be appealed when the claims involved in the order are separable from others in the case at hand and important enough that a decision from the courts, without full agency review, is desirable.[35]

At this time, the FAA reiterates, consistent with the reasoning in the preamble of the current rule and the 1994 NPRM, the Director has the discretion to issue partial as well as complete dismissals with prejudice. The FAA proposes to amend § 16.247(a) to clarify that such orders of dismissal with prejudice under § 16.25 are final agency orders subject to judicial review.

11. Adjustment of Time Periods Specified for Service by Mail

Presently, § 16.17(c) provides that 3 days shall be added to the prescribed period after the service if the service of a document is by mail. The FAA is proposing to extend this time period to 5 days in the new rule to align it with requirements contained in the agency's part 13 Rules of Practice found at 14 CFR 13.211(e).

12. Other Updates

The FAA proposes other minor updates to part 16 that include:

- Replacing the term ''Director's determination'' with ''Director's Determination'' throughout the rule to reflect what has become a term of art;
- Replacing references to the FAA Office of Airport Safety and Standards in the definition of ''Director'' (§ 16.3) with the FAA Office of Airport Compliance and Management Analysis, to reflect current FAA Office of Airport organization (as described in section II.B of this preamble);
- Adding reference to ''other Federal obligations'' to §§ 16.1(a)(3)–(5) to ensure that any special conditions, terms or requirements incorporated in grant agreements are included within the provisions of general applicability to initiate a part 16 proceeding;
- Removing § 16.301, Definitions, inserting the definitions of ''decisional employee'' and ''ex parte communication'' currently in § 16.301 to § 16.3, Definitions, and redesignating §§ 16.303, 16.305, and 16.307 as §§ 16.301, 16.303, and 16.305, respectively;
- Adding citation for 49 U.S.C. 47133, Restriction on use of revenues, which became effective in 1996 after the publication of current part 16, to the part 16 List of Authorities and § 16.1(a)(5) (it is technically necessary to include references to 49 U.S.C. § 47133, Restriction on use of airport revenue, for completeness even though it supplements and parallels 49 U.S.C. 47107(b));
- Amending the filing address in § 16.13 to reflect that the docket clerk in part 16 proceedings is now located in AGC–600;
- Adding clarifying instructions for filing motions (§ 16.19);
- Adding § 16.19(e) Extension by motion, requiring that ''[a] party shall file a written motion for extension of time no later than 3 days before the document is due,'' to ensure clarity and transparency to the process of granting extensions. The day is described as a ''business-day'' to avoid the 3-day limit encompassing a Saturday, Sunday, or legal holiday; and
- Adding to § 16.21(c) requirements that certifications of a party's efforts to obtain informal resolution involve descriptions of efforts that are ''relatively recent'' and ''demonstrated by pertinent documentation.''

The FAA believes that these updates would align the rule with current practice and terminology.

IV. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble

[32] See *Albuquerque Valet Service, et al.,* v. *City of Albuquerque,* FAA Docket No. 16–01–01, at 3 n. 2 (Director's Determination February 11, 2002).

[33] 61 FR 53998, 540001 October 16, 1996.

[34] 59 FR 29,880–01, 29883, June 9, 1994.

[35] *Finnegan* v. *Director, Office of Workers' Compensation Programs,* 69 F.3d 1039, 1040 (9th Cir. 1996). See also *Elkins* v. *Gober,* 229 F.3d 1369, 1373 (Fed. Cir. 2000). C.f. *State of New York* v. *United States,* 568 F.2d 887, 893 (2d Cir. 1977).

summarizes the FAA's analysis of the economic impacts of this proposed rule.

A. Regulatory Evaluation

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule.

The reasoning for this determination follows: The FAA's Office of Airport Compliance and Management Analysis handles complaints made against federally-assisted airports. Part 16 provides a process for investigating and adjudicating complaints against airport operators for violation of federal obligations. This proposed rule clarifies and improves the efficiency of the current part 16 regulations for adjudicating complaints on matters within the agency's authority. These changes would be cost beneficial as they decrease time spent and volume of paper documents required to process part 16 complaints. Resource savings would be produced by allowing parties and the government to use the new electronic filing process and allow a respondent to file a motion to dismiss or a motion for summary judgment in lieu of an answer. Once the complainant has prevailed at the Director's Determination, no further positive outcome can be obtained through FAA action. At this point there is no further purpose to be served by the complainant and further appeals (and participation) are not productive.

The expected outcome will be a minimal impact with positive net benefits, and a regulatory evaluation was not prepared. The FAA requests comments regarding this determination.

FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As noted above, the proposed changes to part 16 are cost relieving. Accordingly, the proposed rule would not have a significant impact on a substantial number of small entities. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA requests comments regarding this determination. Specifically, the FAA requests comments on whether the proposed rule creates any specific compliance costs unique to small entities. Please provide detailed economic analysis to support any cost claims.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and therefore create no obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts, identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 16

Administrative practice and procedure, Airports, Investigations.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 16—RULES OF PRACTICE FOR FEDERALLY-ASSISTED AIRPORT ENFORCEMENT PROCEEDINGS

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

Authority: 49 U.S.C. 106(g), 322, 1110, 1111, 1115, 1116, 1718 (a) and (b), 1719, 1723, 1726, 1727, 40103(e), 40113, 40116, 44502(b), 46101, 46104, 46110, 47104, 47106(e), 47107, 47108, 47111(d), 47122, 47123–47125, 47133, 47151–47153, 48103.

2. Amend § 16.1 by revising paragraphs (a) introductory text and (a)(3) through (6) to read as follows:

§ 16.1 Applicability and description of part.

(a) *General.* The provisions of this part govern all Federal Aviation Administration (FAA) proceedings involving Federally-assisted airports, except for complaints or requests for determination filed with the Secretary under 14 CFR part 302, whether the proceedings are instituted by order of the FAA or by filing a complaint with the FAA under the following authorities:

* * * * *

(3) The assurances and other Federal obligations contained in grant-in-aid agreements issued under the Federal Airport Act of 1946, 49 U.S.C. 1101 *et seq.* (repealed 1970).

(4) The assurances and other Federal obligations contained in grant-in-aid agreements issued under the Airport and Airway Development Act of 1970, as amended, 49 U.S.C. 1701 *et seq.*

(5) The assurances and other Federal obligations contained in grant-in-aid agreements issued under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, 49 U.S.C. 47101 *et seq.,* specifically section 511(a), 49 U.S.C. 47107, and 49 U.S.C. 47133.

(6) Section 505(d) of the Airport and Airway Improvement Act of 1982, and the requirements concerning civil rights and/or Disadvantaged Business Enterprise (DBE) issues contained in 49 U.S.C. 47107(e) and 49 U.S.C. 47113; 49 U.S.C. 47123; 49 U.S.C. 322, as amended; 49 CFR parts 23 and/or 26; and/or grant assurance 30 and/or grant assurance 37.

* * * * *

3. Amend § 16.3 as follows:

a. Remove the definitions of *Director's determination, File,* and *Final decision and order;*

b. Revise the definitions of *Agency employee, Associate Administrator, Complaint, Director, Hearing officer, Mail,* and *Personal delivery;* and

c. Add definitions for *Administrator, Agency, Decisional employee, Electronic filing, Ex parte communication,* and *Writing or written.*

The revisions and additions read as follows:

§ 16.3 Definitions.

* * * * *

Administrator means the Administrator of the FAA;

Agency means the FAA.

* * * * *

Agency employee means any employee of the FAA.

Associate Administrator means the FAA Associate Administrator for Airports or a designee. For the purposes of this part only, Associate Administrator also means the Assistant Administrator for Civil Rights or a designee for complaints that the FAA Associate Administrator for Airports transfers to the Assistant Administrator for Civil Rights.

* * * * *

Complaint means a written document meeting the requirements of this part and filed under this part:

(1) By a person directly and substantially affected by anything allegedly done or omitted to be done by

any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator, or

(2) By a person under 49 CFR 26.105(c) against a recipient of FAA funds alleged to have violated a provision of 49 CFR parts 23 and/or 26.

Decisional employee means the Administrator, Deputy Administrator, Associate Administrator, Director, hearing officer, or other FAA employee who is or who may reasonably be expected to be involved in the decisional process of the proceeding.

Director means the Director of the FAA Office of Airport Compliance and Management Analysis, or a designee. For the purposes of this part only, Director also means the Deputy Assistant Administrator for Civil Rights for complaints that the Director of the FAA Office of Airport Compliance and Management Analysis transfers to the Deputy Assistant Administrator for Civil Rights or designee.

Electronic filing means the process of sending electronic mail (email) to the FAA Part 16 Docket Clerk, with scanned documents attached, as a Portable Document Format (PDF) file.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this part, or communications between FAA employees who participate as parties to a hearing pursuant to 16.203(b) of this part and other parties to a hearing.

Hearing officer means an attorney designated by the Deputy Chief Counsel in a hearing order to serve as a hearing officer in a hearing under this part. The following are not designated as hearing officers: the Chief Counsel and Deputy Chief Counsel; the Regional or Center Counsel and attorneys in the FAA region or center in which the noncompliance has allegedly occurred or is occurring; the Assistant Chief Counsel and attorneys in the Airport Law Branch of the FAA Office of the Chief Counsel; and the Assistant Chief Counsel and attorneys in the Litigation Division of the FAA Office of Chief Counsel.

* * * * *

Mail means U.S. first class mail; U.S. certified mail; and U.S. express mail. Unless otherwise noted, mail also means electronic mail containing PDF copies of pleadings or documents required herein.

* * * * *

Personal delivery means same-day hand delivery or overnight express delivery service.

* * * * *

Writing or written includes paper documents that are filed and/or served by mail, personal delivery, facsimile, or email (as attached PDF files).

4. Amend § 16.11 by revising the section heading and paragraphs (a) and (b) introductory text, and adding paragraphs (c) and (d) to read as follows:

§ 16.11 General processes.

(a) Under the authority of 49 U.S.C. 40113 and 47121, the Director may conduct investigations, issue orders, and take such other actions as are necessary to fulfill the purposes of this part. This includes the extension of any time period prescribed, where necessary or appropriate for a fair and complete consideration of matters before the agency, prior to issuance of the Director's Determination.

(b) Notwithstanding any other provision of this part, upon finding that circumstances require expedited handling of a particular case or controversy, the Director may issue an order directing any of the following prior to the issuance of the Director's Determination:

* * * * *

(c) Other than those matters concerning a Corrective Action Plan, the jurisdiction of the Director terminates upon the issuance of the Director's Determination. All matters arising during the appeal period, such as requests for extension of time to make an appeal, will be addressed by the Associate Administrator.

(d) The Director may transfer to the FAA Deputy Assistant Administrator for Civil Rights or Office of Civil Rights designee the authority to prepare and issue Director's Determinations pursuant to § 16.31 for complaints alleging violations of Section 505(d) of the Airport and Airway Improvement Act of 1982, and the requirements concerning civil rights and/or Disadvantaged Business Enterprise (DBE) issues contained in 49 U.S.C. 47107(e) and 49 U.S.C. 47113; 49 U.S.C. 47123; 49 U.S.C. 322, as amended; 49 CFR parts 23 and/or 26; and/or grant assurance 30 and/or grant assurance 37.

5. Amend § 16.13 by revising paragraphs (a), (b), (c), (d), and (f) and adding paragraphs (h) and (i) to read as follows:

§ 16.13 Filing of documents.

* * * * *

(a) *Filing address.* Documents filed under this Part shall be filed with the Office of the Chief Counsel, Attention: FAA Part 16 Docket Clerk, AGC–600, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591. Documents to be filed with a hearing officer shall be filed at the address and in the manner stated in the hearing order.

(b) *Date and method of filing.* Filing of any document shall be by personal delivery or mail as defined in this part, by facsimile (when confirmed by filing on the same date by one of the foregoing methods), or electronically as set forth in paragraph (h) of this section. Unless the date is shown to be inaccurate, documents filed with the FAA shall be deemed to be filed on the date of personal delivery, on the mailing date shown on the certificate of service, on the date shown on the postmark if there is no certificate of service, on the send date shown on the facsimile (provided filing has been confirmed through one of the foregoing methods), or on the mailing date shown by other evidence if there is no certificate of service and no postmark. Unless the date is shown to be inaccurate, documents filed electronically shall be deemed to be filed on the date shown on the certificate of service or, if none, the date of electronic transmission to the last party required to be served.

(c) *Number of copies.* With the exception of electronic filing or unless otherwise specified, an executed original and three copies of each document shall be filed with the FAA Part 16 Docket Clerk. One of the three copies shall not be stapled, bound or hole-punched. Copies need not be signed, but the name of the person signing the original shall be shown. If a hearing order has been issued in the case, one of the three copies shall be filed with the hearing officer unless otherwise prescribed by the hearing officer. A facsimile neither constitutes an executed original nor one of the three copies required directly above.

(d) *Form.* Documents filed under this part shall:

(1) Be typewritten or legibly printed;

(2) Include, in the case of docketed proceedings, the docket number of the proceeding on the front page; and

(3) Be marked to identify personal, privileged or proprietary information. Decisions for the publication and release of these documents will be made in accordance with 5 U.S.C. 552 and 49 CFR part 7.

* * * * *

(f) *Designation of person to receive service.* The initial document filed by any person shall state on the first page the name, post office address, telephone number, facsimile number, if any, and

email address, if filing electronically, of the person(s) to be served with documents in the proceeding. If any of these items change during the proceeding, the person shall promptly file notice of the change with the FAA Part 16 Docket Clerk and the hearing officer and shall serve the notice on all parties.

* * * * *

(h) *Electronic filing.* (1) The initial complaint may be served electronically upon the respondent only if the respondent has previously agreed with the complainant in writing to participate in electronic filing. Documents may be filed under this Part electronically by sending an email containing (an) attachment(s) of (a) PDF file(s) of the required pleading to the FAA Docket Clerk, and the person designated in paragraph (h)(3) of this section.

(2) The subject line of the email must contain the names of the complainant and respondent, and must contain the FAA docket number (if assigned). The size of each email must be less than 10 MB. Email attachments containing executable files (e.g., .exe and .vbs files) will not be accepted.

(3) The email address at which the parties may file the documents described in this section is *9–AWA–AGC–Part-16@faa.gov.* No acknowledgement or receipt will be provided by the FAA to parties using this method. A party filing electronically as described in this section must provide to the FAA Part 16 Docket Clerk and the opposing party an email address of the person designated by the party to receive pleadings.

(4) By filing a pleading or document electronically as described in this section, a party waives the rights under this part for service by the opposing party and the FAA by methods other than email. If a party subsequently decides to ''opt-out'' of electronic filing, that party must so notify the FAA Part 16 Docket Clerk and the other party in writing, from which time the FAA and the parties will begin serving the opting-out party in accordance with §§ 16.13 and 16.15. This subsection only exempts the parties from the filing and service requirements in § 16.13(a) (with the exception that ''Documents to be filed with a hearing officer shall be filed at the address stated in the hearing order.''), the method of filing requirements in § 16.13(b), and the number of documents requirements in § 16.13(c).

(i) *Internet accessibility of documents filed in the Hearing Docket.* (1) Unless protected from public disclosure, all documents filed in the Hearing Docket are accessible through the Federal Docket Management System (FDMS): *http://www.regulations.gov.* To access a particular case file, use the FDMS number assigned to the case.

(2) Determinations issued by the Director and Associate Administrator in Part 16 cases, indexes of decisions, contact information for the FAA Hearing Docket, the rules of practice, and other information are available on the FAA Office of Airport's Web site at: *http://part16.airports.faa.gov/index.cfm.*

6. Amend § 16.15 by revising paragraphs (a), (b), (d)(1) and (d)(2), and adding paragraph (d)(3) to read as follows:

§ 16.15 Service of documents on the parties and the agency.

* * * * *

(a) *Who must be served.* Copies of all documents filed with the FAA Part 16 Docket Clerk shall be served by the persons filing them on all parties to the proceeding. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on the FAA and all parties. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses, facsimile numbers (if also served by facsimile), or email address (if served electronically in accordance with § 16.13(h)), by [specify method of service]:

[list persons, addresses, facsimile numbers, email addresses (as applicable)]

Dated this ____ day of ____, 20____.

[signature], for [party]

(b) Method of service. Except as otherwise agreed by the parties and, if applicable, the hearing officer, the method of service is the same as set forth in § 16.13(b) for filing documents.

* * * * *

(d) * * *

(1) When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under § 16.13(f);

(2) When a properly addressed envelope, sent to the most current address submitted under § 16.13(f), has been returned as undeliverable, unclaimed, or refused; or

(3) When the party serving the document electronically has a confirmation statement demonstrating that the email was properly sent to a party correctly addressed.

* * * * *

7. Amend § 16.17 by revising paragraph (c) to read as follows:

§ 16.17 Computation of time.

* * * * *

(c) Whenever a party has the right or is required to do some act within a prescribed period after service of a document upon the party, and the document is served on the party by first class mail or certified mail, 5 days shall be added to the prescribed period.

8. Amend § 16.19 by adding paragraphs (d) and (e) to read as follows:

§ 16.19 Motions.

* * * * *

(d) *Deferred actions on motions.* A ruling on a motion made before the time set for the issuance of the Director's Determination may be deferred to and included with the Director's Determination.

(e) *Extension by motion.* A party shall file a written motion for an extension of time not later than 3 business days before the document is due unless good cause for the late filing is shown. A party filing a motion for extension should attempt to obtain the concurrence of the opposing party. A party filing a written motion for an extension of time shall file the motion as required under § 16.13, and serve a copy of the motion on all parties and the docket clerk as required under § 16.15.

9. Revise § 16.21 to read as follows:

§ 16.21 Pre-complaint resolution.

(a) Except for those persons filing under 49 CFR 26.105(c), prior to filing a complaint under this part, a person directly and substantially affected by the alleged noncompliance shall initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. These efforts at informal resolution may include, without limitation, at the parties' expense, mediation, arbitration, or the use of a dispute resolution board, or other form of third party assistance. The FAA Airports District Office, FAA Airports Field Office, FAA Regional Airports Division responsible for administering financial assistance to the sponsor, or the FAA Office of Civil Rights will be available upon request to assist the parties with informal resolution.

(b) Except for complaints filed under 49 CFR 26.105(c), a complaint will be dismissed under § 16.27 unless the person or authorized representative filing the complaint certifies that:

(1) The complainant has made substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint; and

(2) There is no reasonable prospect for practical and timely resolution of the dispute.

(c) The certification required under paragraph (b) of this section, shall include a brief description of the party's efforts to obtain informal resolution but shall not include information on monetary or other settlement offers made but not agreed upon in writing by all parties. Such efforts to resolve informally should be relatively recent and be demonstrated by pertinent documentation. There is no required form or process for informal resolution, but in each case the requirements to resolve the matter informally must meet the requirements of this paragraph.

10. Amend § 16.23 by revising the section heading; revising paragraphs (a), (b)(2), (b)(4), (c), (d), and (j); and adding paragraphs (k) and (l) to read as follows:

§ 16.23 Pleadings.

(a) A person directly and substantially affected by any alleged noncompliance or a person qualified under 49 CFR 26.105(c) may file a complaint under this Part. A person doing business with an airport and paying fees or rentals to the airport shall be considered directly and substantially affected by alleged revenue diversion as defined in 49 U.S.C. 47107(b).

(b) * * *

(2) Include all documents then available in the exercise of reasonable diligence, to be offered in support of the complaint, and to be served upon all persons named in the complaint as persons responsible for the alleged action(s) or omission(s) upon which the complaint is based;

* * * * *

(4) Except for complaints filed under 49 CFR 26.105(c), describe how the complainant was directly and substantially affected by the things done or omitted to be done by the respondents.

(c) Unless the complaint is dismissed pursuant to § 16.25 or § 16.27, the FAA notifies the complainant and respondent in writing within 20 days after the date the FAA receives the complaint that the complaint has been docketed.

(d) The respondent shall file an answer within 20 days of the date of service of the FAA notification or, if a motion is filed under § 16.26, within 20 days of the date of service of an FAA order denying all or part of that motion.

* * * * *

(j) Amendments or supplements to the pleadings described in this section will not be allowed without showing good cause through a motion and supporting documents.

(k) *Burden of Proof.* Except as used in subpart F of this part,

(1) The burden of proof is on the complainant to show noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act.

(2) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(3) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

(l) Except for good cause shown through motion and supporting documents, discovery is not permitted except as provided in §§ 16.213 and 16.215.

11. Revise § 16.25 to read as follows:

§ 16.25 Dismissals.

(a) Within 20 days after the receipt of the complaint, unless a motion has been filed under § 16.26, the Director will dismiss a complaint, or any claim made in a complaint, with prejudice if:

(1) It appears on its face to be outside the jurisdiction of the Administrator under the Acts listed in § 16.1;

(2) On its face it does not state a claim that warrants an investigation or further action by the FAA; or

(3) The complainant lacks standing to file a complaint under §§ 16.3 and 16.23.

(b) A dismissal under this section will include the reasons for the dismissal.

12. Add § 16.26 as follows:

§ 16.26 Motions to dismiss and motions for summary judgment.

(a) In lieu of an answer, the respondent may file a motion to dismiss the complaint or a motion for summary judgment on the complaint. The respondent may move for dismissal of the entire complaint or move for dismissal of particular issues from adjudication. The motion must be filed within 20 days after the date the FAA receives the complaint.

(b) A motion to dismiss or a motion for summary judgment may be based on the grounds that there is no genuine issue of material fact for adjudication and that the complaint, when viewed in the light most favorable to the complainant, should be dismissed as a matter of law because it:

(1) Fails to state a claim that the respondent has violated any obligation subject to adjudication under this part;

(2) Fails to state a claim within the jurisdiction of the FAA; or

(3) Fails to meet the requirements for filing a complaint under this part.

(c) A motion to dismiss or a motion for summary judgment shall be accompanied by a concise statement of the material facts as to which the respondent contends there is no genuine issue of material fact. The motion may include affidavits and documentary evidence in support of the contention that there is no genuine issue of fact in dispute.

(d) A complainant may file an answer to the motion within 10 days of the date the motion is served on the complainant, or within any other period set by the Director. The answer shall be accompanied by a concise statement of the material facts the complainant contends are and are not in dispute, and may be accompanied by affidavits and other documentary evidence in support of that contention.

(e) Within 30 days of the date an answer to a motion is due under this section, the Director may issue an order granting the motion, in whole or in part. If the Director denies the motion in whole or in part, then within 20 days of when the order is served on the respondent, the respondent shall file an answer to the complaint.

(f) If the Director does not act on the motion within 30 days of the date an answer to a motion is due under this section, the respondent shall file an answer to the complaint within the next 20 days.

13. Revise § 16.27 to read as follows:

§ 16.27 Incomplete complaints.

(a) If a complaint is not dismissed pursuant to § 16.25 of this part, but is deficient as to one or more of the requirements set forth in § 16.21 or § 16.23(b), the Director will dismiss the complaint within 20 days after receiving it. Dismissal will be without prejudice to the refiling of the complaint after amendment to correct the deficiency. The Director's dismissal will include the reasons for the dismissal.

(b) Dismissals under this section are not initial determinations, and appeals from decisions under this section will not be permitted.

14. In § 16.29, revise the first sentence of paragraph (b)(2) to read as follows:

§ 16.29 Investigations.

* * * * *

(b) * * *

(2) Obtaining additional oral and documentary evidence by use of the agency's authority to compel production of such evidence under section 313 of the Federal Aviation Act of 1958 as amended by 49 U.S.C. 40113 and 46104, and section 519 of the Airport and Airway Improvement Act, 49 U.S.C. 47122. * * *

* * * * *

15. Revise § 16.31 to read as follows:

§ 16.31 Director's Determinations after investigations.

(a) After consideration of the pleadings and other information obtained by the FAA after investigation, the Director will render an initial determination and serve it upon each party within 120 days of the date the last pleading specified in § 16.23 was due.

(b)(1) The Director's Determination shall include findings of fact and conclusions of law, accompanied by explanations and based upon all material issues of fact, credibility of the evidence, law and discretion presented on the record, together with a statement of the reasons therefor.

(2) The Director shall issue a determination or rule in a party's favor only if the determination or ruling is in accordance with law and supported by a preponderance of the reliable, probative, and substantial evidence contained in the record.

(c) A party adversely affected by the Director's Determination may appeal the initial determination as provided in § 16.33. However, if the Director's Determination that is appealed contains a Corrective Action Plan, the Director has the discretion to suspend the Corrective Action Plan until the appeal is resolved.

(d) If the Director's Determination finds the respondent in noncompliance and proposes the issuance of a compliance order, the initial determination will include notice of opportunity for a hearing under subpart F of this part if a hearing is required by statute or otherwise provided by the FAA. A hearing may be required by statute if the FAA determination would terminate eligibility for grants under 49 U.S.C. 47114(c) or (e), or terminate payments on a grant agreement under 49 U.S.C. subchapter 471. The respondent may elect or waive a hearing, as provided in subpart E of this part.

(e) The Director will not consider requests for rehearing, reargument, reconsideration, or modification of a Director's Determination without a finding of good cause.

16. Revise § 16.33 to read as follows:

§ 16.33 Final decisions without hearing.

(a) The Associate Administrator may transfer to the FAA Assistant Administrator for Civil Rights the responsibility to prepare and issue Final Agency Decisions pursuant to this section for appeals with issues concerning civil rights.

(b) The Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where—

(1) The complaint is dismissed after investigation;

(2) A hearing is not required by statute and is not otherwise made available by the FAA; or

(3) The FAA provides opportunity for a hearing to the respondent and the respondent waives the opportunity for a hearing as provided in subpart E of this part.

(c) In the cases described in paragraph (a) of this section, within 30 days after the date of service of the initial determination, a party adversely affected by the Director's Determination may file in accordance with § 16.13 and serve in accordance with § 16.15 a simultaneous Notice of Appeal and Brief.

(d) A reply to an appeal brief may be filed within 20 days after the date of service of the appeal.

(e) On appeal, the Associate Administrator will consider the issues addressed in any order on a motion to dismiss or motion for summary judgment and any issues accepted in the Director's Determination using the following analysis:

(1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence contained in the record?

(2) Are conclusions made in accordance with law, precedent and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(f) Any new issues or evidence presented in an appeal or reply will not be considered unless accompanied by a petition and good cause found as to why the new issue or evidence was not presented to the Director. Such a petition must:

(1) Set forth the new matter;

(2) Contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and

(3) Contain a statement explaining why such new issue or evidence could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

(g) The Associate Administrator will issue a final decision and order within 60 days after the due date of the reply.

(h) If no appeal is filed within the time period specified in paragraph (c) of this section, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final, because there is no administrative appeal, is not judicially reviewable.

(i) No requests for rehearing, reargument, reconsideration, or modification of a final order will be considered without a finding of good cause.

17. Add § 16.34 to read as follows:

§ 16.34 Consent orders.

(a) The parties may agree at any time before the issuance of a final agency decision to dispose of the case by issuance of a consent order. Good faith efforts to resolve a complaint through issuance of a consent order may continue throughout the administrative process. However, except as provided in § 16.11(a), such efforts may not serve as the basis for extensions of the times set forth in this part.

(b) A proposal for a consent order, specified in paragraph (a) of this section, shall include:

(1) A proposed consent order;

(2) An admission of all jurisdictional facts; and

(3) An express waiver of the right to further procedural steps and of all rights of judicial review.

(c) If the parties agree to dispose of a case by issuance of a consent order before the FAA issues a Director's Determination, the proposal for a consent order is submitted jointly by the parties to the Director, together with a request to adopt the consent order and dismiss the case. The Director issues the consent order as an order of the FAA and terminates the proceeding.

§ 16.105 [Amended]

18. Amend § 16.105 by removing ''determination'' and adding ''Determination'' in its place.

19. Revise § 16.109 to read as follows:

§ 16.109 Orders terminating eligibility for grants, cease and desist orders, and other compliance orders.

(a) The agency will provide the opportunity for a hearing if, in the Director's determination, the agency issues or proposes to issue an order terminating eligibility for grants pursuant to 49 U.S.C. 47106(d), an order suspending the payment of grant funds pursuant to 49 U.S.C. 47111(d), an order withholding approval of any new application to impose a passenger facility charge pursuant to 49 U.S.C. 47111(e), a cease and desist order, an order directing the refund of fees unlawfully collected, or any other compliance order issued by the Administrator to carry out the provisions of the Acts, and required to be issued after notice and opportunity for a hearing. In cases in which a hearing is not required by statute, the FAA may provide opportunity for a hearing at its discretion.

(b) In a case in which the agency provides the opportunity for a hearing, the Director's Determination issued under § 16.31 will include a statement of the availability of a hearing under subpart F of this part.

(1) Within 20 days after service of a Director's Determination under § 16.31 that provides an opportunity for a hearing a person subject to the proposed compliance order may—

(i) Request a hearing under subpart F of this part;

(ii) Waive hearing and appeal the Director's Determination in writing, as provided in § 16.33;

(iii) File, jointly with a complainant, a motion to withdraw the complaint and to dismiss the proposed compliance action; or

(iv) Submit, jointly with the agency, a proposed consent order under § 16.34(c).

(2) If the respondent fails to file an appeal in writing within the time periods provided in paragraph (c) of this section, the Director's Determination becomes final.

(c) The Director may either direct the respondent to submit a Corrective Action Plan or initiate proceedings to revoke and/or deny the respondent's application for Airport Improvement Program discretionary grants under 49 U.S.C. 47115 and general aviation airport grants under 49 U.S.C. 47114(d) when a Director's Determination finds a respondent in noncompliance and does not provide for a hearing.

(d) In the event that the respondent fails to submit, in accordance with a Director's Determination, a Corrective Action Plan acceptable to the FAA within the time provided, unless extended by the FAA for good cause, and/or if the respondent fails to complete the Corrective Action Plan as specified therein, the Director may initiate action to revoke and/or deny applications for Airport Improvement Program discretionary grants under 49 U.S.C. 47115 and general aviation airport grants under 49 U.S.C. 47114(d).

(e) For those violations that cannot be remedied through corrective action the Director may initiate action to revoke and/or deny the respondent's applications for Airport Improvement Program discretionary grants under 49 U.S.C. 47115 and general aviation airport grants under 49 U.S.C. 47114(d).

(f) When the Director concludes that the respondent has fully complied with the Corrective Action Plan and/or when the Director determines that the respondent has corrected the areas of noncompliance, the Director will terminate the proceeding.

(g) A complainant's standing terminates upon the issuance of a Director's Determination that finds a respondent in noncompliance on all identified issues. The complainant may not appeal the Director's Determination if the Director finds noncompliance on all identified issues.

20. Amend § 16.201 by revising paragraph (b) to read as follows:

§ 16.201 Notice and order of hearing.

* * * * *

(b) Where there are no genuine issues of material fact requiring oral examination of witnesses, the hearing order may contain a direction to the hearing officer to conduct a hearing by submission of briefs and oral argument without the presentation of testimony or other evidence.

21. Amend § 16.203 by revising paragraphs (a)(1), (b)(1), and (b)(2) to read as follows:

§ 16.203 Appearances, parties, and rights of parties.

(a) * * *

(1) Any party may be accompanied, represented, or advised by an attorney licensed by a State, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that State or territory, or by another person authorized by the hearing officer to be the party's representative.

* * * * *

(b) * * *

(1) The parties to the hearing are the complainant(s) and respondent(s) named in the hearing order, and the agency. The style of any pleadings filed under this Subpart shall name the respondent as the Appellant, and the Federal Aviation Administration as the Agency.

(2) Unless otherwise specified in the hearing order, the agency attorney will serve as prosecutor for the agency from the date of issuance of the Director's Determination providing an opportunity for hearing.

22. Revise § 16.207 to read as follows:

§ 16.207 Intervention and other participation.

(a) Intervention and participation by other persons are permitted only at the hearing stage of the complaint process and with the written approval of the hearing officer.

(b) A person may submit a written motion for leave to intervene as a party. Except for good cause shown, a motion for leave to intervene shall be submitted not later than 10 days after the notice of hearing and hearing order.

(c) If the hearing officer finds that intervention will not unduly broaden the issues or delay the proceedings and, if the person has an interest that will benefit the proceedings, the hearing officer may grant a motion for leave to intervene. The hearing officer may determine the extent to which an intervenor may participate in the proceedings.

(d) Other persons may petition the hearing officer for leave to participate in the hearing. Participation is limited to the filing of a posthearing brief and reply to the hearing officer and the Associate Administrator. Such a brief shall be filed and served on all parties in the same manner as the parties' posthearing briefs are filed.

(e) Participation under this section is at the discretion of the hearing officer, and no decision permitting participation shall be deemed to constitute an expression that the participant has such a substantial interest in the proceeding as would entitle it to judicial review of such decision.

23. In § 16.211, revise the last sentence in paragraph (c) to read as follows:

§ 16.211 Prehearing conference.

* * * * *

(c) * * * In addition, the hearing officer establishes the schedule, which shall provide for the issuance of an initial decision not later than 110 days after issuance of the Director's Determination order unless otherwise provided in the hearing order.

24. Amend § 16.215 by adding paragraph (e) to read as follows:

§ 16.215 Depositions.

* * * * *

(e) *Depositions of agency employees.* (1) Depositions of Agency Employees will not be allowed except under the provisions of 49 CFR part 9.

(2) Such depositions will be allowed only with the specific written permission of the Chief Counsel or his designee.

25. Revise § 16.227 to read as follows:

§ 16.227 Standard of proof.

The hearing officer shall issue an initial decision or rule in a party's favor only if the decision or ruling is in accordance with law and supported by a preponderance of the reliable, probative, and substantial evidence contained in the record.

26. Amend § 16.229 by adding introductory text to read as follows:

§ 16.229 Burden of proof.

As used in this subpart, the burden of proof is as follows:

* * * * *

27. Revise § 16.233 to read as follows:

§ 16.233 Record.

(a) *Exclusive record.* The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications requests and rulings, all documents included in the hearing record and the Director's Determination shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(b) *Examination and copy of record.* A copy of the record will be filed by the FAA Part 16 Docket Clerk in the Federal Docket Management System (FDMS). Any person desiring to review the record may then do so at *http://www.regulations.gov.*

28. Amend § 16.235 by revising paragraph (b) to read as follows:

§ 16.235 Argument before the hearing officer.

* * * * *

(b) *Posthearing Briefs.* The hearing officer may request or permit the parties to submit posthearing briefs. The hearing officer may provide for the filing of simultaneous reply briefs as well, if such filing will not unduly delay the issuance of the hearing officer's initial decision. Posthearing briefs shall include proposed findings of fact and conclusions of law; exceptions to rulings of the hearing officer; references to the record in support of the findings of fact; and supporting arguments for the proposed findings, proposed conclusions, and exceptions.

§§ 16.241 and 16.243 [Transferred to Subpart F]

29. Sections 16.241 and 16.243 are transferred from subpart G to subpart F.

Subpart G—[Removed and Reserved]

30. Remove and reserve subpart G.

31. Amend § 16.241 by revising paragraphs (a) and (c) and removing paragraph (f).

The revisions read as follows:

§ 16.241 Initial decisions, order, and appeals.

(a) The hearing officer shall issue an initial decision based on the record developed during the proceeding and shall send the initial decision to the parties not later than 110 days after the Director's Determination unless otherwise provided in the hearing order.

* * * * *

(c) If an appeal is filed, the Associate Administrator reviews the entire record and issues a final agency decision and order within 60 days of the due date of the reply. If no appeal is filed, the Associate Administrator may take review of the case on his or her own motion. If the Associate Administrator finds that the respondent is not in compliance with any Act or any regulation, agreement, or document of conveyance issued or made under such Act, the final agency order includes, in accordance with § 16.245(d), a statement of corrective action, if appropriate, and identifies sanctions for continued noncompliance.

* * * * *

32. Add § 16.245 to subpart F to read as follows:

§ 16.245 Associate Administrator review after a hearing.

(a) The Associate Administrator may transfer to the FAA Assistant Administrator for Civil Rights the authority to prepare and issue Final Agency Decisions pursuant to § 16.241 for appeals from a hearing concerning civil rights issues.

(b) After a hearing is held, and, after considering the issues as set forth in § 16.245(e), if the Associate Administrator determines that the hearing officer's initial decision or order should be changed, the Associate Administrator may:

(1) Make any necessary findings and issue an order in lieu of the hearing officer's initial decision or order, or

(2) Remand the proceeding for any such purpose as the Associate Administrator may deem necessary.

(c) If the Associate Administrator takes review of the hearing officer's initial decision on the Associate Administrator's own motion, the Associate Administrator issues a notice of review within 20 days of the actual date the initial decision is issued.

(1) The notice sets forth the specific findings of fact and conclusions of law in the initial decision that are subject to review by the Associate Administrator.

(2) Parties may file one brief on review to the Associate Administrator or rely on their posthearing brief to the hearing officer. A brief on review shall be filed not later than 10 days after service of the notice of review. Filing and service of a brief on review shall be by personal delivery.

(3) The Associate Administrator issues a final agency decision and order within 30 days of the due date of the brief. If the Associate Administrator finds that the respondent is not in compliance with any Act or any regulation, agreement or document of conveyance issued under such Act, the final agency order includes a statement of corrective action, if appropriate.

(d) When the final agency decision finds a respondent in noncompliance, and where a respondent fails to properly appeal the final agency decision as set forth in subpart G, of this part, the Associate Administrator will issue an order remanding the case to the Director for the following action:

(1) In the event that the respondent fails to submit, in accordance with the final agency decision, a Corrective Action Plan acceptable to the FAA within the time provided, unless extended by the FAA for good cause, and/or if the respondent fails to complete the Corrective Action Plan as specified therein, the Director may initiate action to revoke and/or deny applications for Airport Improvement Program grants under 49 U.S.C. 47114(c)–(e) and 47115. When the Director concludes that the respondent has fully complied with the Corrective Action Plan, the Director will issue an Order terminating the proceeding.

(2) For those violations that cannot be remedied through corrective action the Director may initiate action to revoke and/or deny the respondent's applications for Airport Improvement Program grants under 49 U.S.C. 47114(c)–(e) and 47115.

(e) On appeal from a hearing officer's initial decision, the Associate Administrator will consider the following issues:

(1) Are the findings of fact each supported by a preponderance of reliable, probative and substantial evidence.

(2) Are conclusions made in accordance with law, precedent and policy.

(3) Are the questions on appeal substantial.

(4) Have any prejudicial errors occurred.

(f) Any new issues or evidence presented in an appeal or reply will not be allowed unless accompanied by a certified petition and good cause found as to why the new matter was not presented to the Director. Such a petition must:

(1) Set forth the new matter;

(2) Contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and

(3) Contain a statement explaining why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

(g) A Final Agency Decision may be appealed in accordance with subpart G of this part.

Subparts H and I—[Redesignated as Subparts G and H]

33. Redesignate subpart H, consisting of § 16.247, and subpart I, consisting of §§ 16.301, 16.303, 16.305, and 16.307, as subparts G and H, respectively.

34. In § 16.247, revise paragraphs (a), (b)(2), and (b)(4) to read as follows:

§ 16.247 Judicial review of a final decision and order.

(a) A person may seek judicial review, in a United States Court of Appeals, of a final decision and order of the Associate Administrator, and of an order of dismissal with prejudice issued by the Director, as provided in 49 U.S.C. 46110 or section 519(b)(4) of the Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47106(d) and 47111(d). A party seeking judicial review shall file a petition for review with the Court not later than 60 days after the order has been served on the party or within 60 days after the entry of an order under 49 U.S.C. 40101 *et seq.*

(b) * * *

(2) A Director's Determination;

* * * * *

(4) A Director's Determination or an initial decision of a hearing officer that becomes the final decision of the Associate Administrator because it was not appealed within the applicable time periods provided under §§ 16.33(c) and 16.241(b).

§ 16.301 [Removed]

35. Remove § 16.301 from newly redesignated subpart H.

§§ 16.303, 16.305, and 16.307 [Redesignated as §§ 16.301, 16.303, and 16.305]

36. In newly redesignated subpart H, redesignate §§ 16.303, 16.305, and 16.307 as §§ 16.301, 16.303, and 16.305, respectively.

Issued in Washington, DC, on February 22, 2012.

Daphne A. Fuller,

Manager, Airports and Environmental Law Division.

[FR Doc. 2012–4993 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0480; Directorate Identifier 2010–NM–035–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain The Boeing Company Model 747–400 and 747–400D series airplanes. That NPRM proposed installing aluminum gutter reinforcing brackets to the forward and aft drip shield gutters of the main equipment center (MEC); and adding a reinforcing fiberglass overcoat to the top surface of the MEC drip shield, including an inspection for cracking and holes in the MEC drip shield, and corrective actions if necessary. That NPRM also provided for an option to install an MEC drip shield drain system, which, if accomplished, would extend the compliance time for adding the reinforcing fiberglass overcoat to the top surface of the MEC drip shield. That NPRM was prompted by a report of a multi-power system loss in flight of #1, #2, and #3 alternating current electrical power systems located in the MEC. This action revises that NPRM by revising the locating dimensions of the brackets and changing the routing of the forward drain tubes. We are proposing this supplemental NPRM to prevent water penetration into the MEC, which could result in the loss of flight critical systems. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this supplemental NPRM by April 19, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.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 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: Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

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–2010–0480; Directorate Identifier 2010–NM–035–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 issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to Model 747–400 and 747–400D series airplanes. That NPRM was published in the **Federal Register** on May 19, 2010 (75 FR 27966). That NPRM proposed to require installing aluminum gutter reinforcing brackets to

the forward and aft drip shield gutters of the MEC; and adding a reinforcing fiberglass overcoat to the top surface of the MEC drip shield, including an inspection for cracking and holes in the MEC drip shield, and corrective actions if necessary. That NPRM also provided for an option to install an MEC drip shield drain system, which, if accomplished, would extend the compliance time for adding the reinforcing fiberglass overcoat to the top surface of the MEC drip shield.

Actions Since Previous NPRM (75 FR 27966, May 19, 2010) Was Issued

Since we issued the previous NPRM (75 FR 27966, May 19, 2010), difficulties were found in accessing areas for repair due to a service bulletin error. We have determined that changing the locating dimensions of support brackets and re-routing the forward drain tubes are necessary due to interference with an existing pitot/static shroud.

Comments

We gave the public the opportunity to comment on the previous NPRM (75 FR 27966, May 19, 2010). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Reference Revised Service Information

Boeing requested that we refer to Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, which includes steps to take into account an interference issue found during part installation.

We agree to update the references in this supplemental NPRM to Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011. (The previous NPRM (75 FR 27966, May 19, 2010) refers to Boeing Alert Service Bulletin 747–25A3555, dated November 4, 2009.) Paragraphs (c) and (g) of this supplemental NPRM have been updated to refer to Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011. Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, revises the locating dimensions of the brackets and changes the routing of the forward drain tubes due to difficulties in accessing areas for repair. It also revises the airplane groups.

Request To Remove Parts Installed During Interim Action

Delta Air Lines requested provisions in the previous NPRM (75 FR 27966, May 19, 2010) to electively remove the stanchions, fittings, and tubing installed when doing the interim action, after completing the terminating inspection, repair, and fiberglass overlay reinforcement on the top surface of the drip shields. Delta Air Lines stated that these items add 26 pounds to the weight of the aircraft, and if the interim action is optional, it may be removed once the terminating action is implemented.

We disagree with the request. We have determined that removal of the hardware installed to the MEC area during the interim action poses concerns on the effect on the protection offered by the terminating action (overcoat layer). Removing the hardware could compromise the seals by creating disbonded seams and reopening cracks in the MEC polycarbonate casing, and could result in other damage. Although the interim action is optional, it should be considered a permanent installation once performed. It should be noted that doing both the interim and terminating actions provides two layers of water protection to the MEC, which greatly minimizes the issue of future water contamination. We have discussed this issue with Boeing. No change has been made to the supplemental NPRM in this regard.

Request To Clarify Material Composition of MEC Drip Shield Gutter

Boeing requested that we change the wording of paragraphs (g)(1) and (g)(2)(i) of the previous NPRM (75 FR 27966, May 19, 2010) from ''MEC drip shield aluminum gutter'' to ''aluminum reinforcing brackets on the MEC drip shield gutter'' to clarify that the original drip shield gutter is composite material and the reinforcement material is aluminum.

We agree with the request and have changed paragraphs (g)(1) and (g)(2)(i) of this supplemental NPRM accordingly.

Request To Change Parts Costs

Boeing requested that we revise the previous NPRM (75 FR 27966, May 19, 2010) to change the parts costs associated with installing the brackets and adding the overcoat. Boeing stated that the parts costs for the aluminum reinforcing bracket kit is $2,408 instead of ''none'' as specified in the previous NPRM. Boeing also stated that the parts costs for the fiberglass reinforcement is $1,731 (3 panels × $577/panel) plus the cost of fiberglass, resin, and repair materials for cracks and holes in the drip shield instead of ''none'' as mentioned in the previous NPRM.

We agree with the request and have changed the ''Estimated costs'' table of this AD accordingly. However, because the costs for parts required for bracket installation depends on the work package, we have stated the cost as ''Up to $2,408'' in the ''Estimated costs'' table of this supplemental NPRM.

FAA's Determination

We are proposing this supplemental NPRM 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. Certain changes described above expand the scope of the original NPRM (75 FR 27966, May 19, 2010). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, as described previously.

Costs of Compliance

We estimate that this proposed AD affects 71 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install Brackets	19 work-hours × $85 per hour = $1,615	Up to $2,408 [1]	Up to $4,023 [1]	Up to $285,633.[1]
Add Overcoat	63 work hours × $85 per hour = $5,355 ($577 × 3).	$1,731	$7,086	$503,106.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install Optional MEC Drip Shield Drain System.	22 work hours × $85 per hour = $1,870	Up to $8,982 [1] ..	Up to $10,852 [1]	Up to $770,492.[1]

[1] Depending on work package.

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):

The Boeing Company: Docket No. FAA–2010–0480; Directorate Identifier 2010–NM–035–AD.

(a) Comments Due Date

We must receive comments by April 19, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and 747–400D series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report of a multi-power system loss in flight of #1, #2, and #3 alternating current electrical power systems located in the main equipment center (MEC). We are issuing this AD to prevent water penetration into the MEC, which could result in loss of flight critical systems.

(f) Compliance

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

(g) Modification

Do the actions specified in either paragraph (g)(1) or (g)(2) of this AD.

(1) Within 24 months after the effective date of this AD, install aluminum reinforcing brackets on the MEC drip shield gutter, in accordance with Work Package 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011; and add a reinforcing fiberglass overcoat to the top surface of the MEC drip shield, including doing a general visual inspection for cracking and holes in the top surface of the MEC drip shield, and doing all applicable corrective actions, in accordance with Work Package 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011. Do all applicable corrective actions before further flight after doing the general visual inspection.

(2) Do the actions specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within 24 months after the effective date of this AD, install aluminum reinforcing brackets on the MEC drip shield gutter, in accordance with Work Package 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011; and install a MEC drip shield drain system, in accordance with Work Package 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011.

(ii) Within 96 months after the effective date of this AD, add a reinforcing fiberglass overcoat to the top surface of the MEC drip shield, including doing a general visual inspection for cracking and holes in the top surface of the MEC drip shield, and doing all applicable corrective actions, in accordance with Work Package 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011. Do all applicable corrective actions before further flight after doing the general visual inspection.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), 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 manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) 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.

(i) Related Information

(1) For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems

Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.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.

Issued in Renton, Washington, on February 24, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–5180 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X

RIN 1506–AB15

Customer Due Diligence Requirements for Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: FinCEN, after consulting with staffs of various Federal supervisory authorities, is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comment on a wide range of questions pertaining to the development of a customer due diligence (CDD) regulation that would codify, clarify, consolidate, and strengthen existing CDD regulatory requirements and supervisory expectations, and establish a categorical requirement for financial institutions to identify beneficial ownership of their accountholders, subject to risk-based verification and pursuant to an alternative definition of beneficial ownership as described below.

DATES: Written comments on this ANPRM must be received on or before May 4, 2012.

ADDRESSES: Comments may be submitted, identified by Regulatory Identification Number (RIN) 1506–AB15, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include RIN 1506–AB15 in the submission. Refer to Docket Number FINCEN–2012–0001.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506–AB15 in the body of the text.

Please submit comments by one method only. All comments submitted in response to this ANPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call). In general, FinCEN will make all comments publicly available by posting them on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

FinCEN: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732 and select option 6.

SUPPLEMENTARY INFORMATION:

I. Scope of ANPRM

The scope of this ANPRM includes all of the industries that have anti-money laundering (AML) program requirements under FinCEN's regulations. At this time, and as an initial matter, FinCEN is considering developing a CDD rule to cover banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities; accordingly, this ANPRM is focused primarily on these institutions. However, FinCEN believes that a CDD rule may be appropriate for all financial institutions subject to FinCEN's regulations, and will consider extending such a rule to such other financial institutions in the future.

Therefore, in addition to focusing on input from those types of institutions that would be subject to an initial rulemaking, FinCEN is also specifically requesting comment from other institutions, such as money services businesses (including providers of prepaid access), insurance companies, casinos, dealers in precious metals, stones and jewels, non-bank mortgage lenders or originators, and other entities under FinCEN's regulations, in particular regarding issues related to identification and verification of customers as discussed in Section IV A. of this ANPRM. While these institutions currently are not mandated to obtain the minimum mandatory information required to identify customers as is mandated in regulations pertaining to depository institutions, brokers or dealers, and others described above, in some cases they still must, on a risk-based approach, obtain all relevant and appropriate customer-related information necessary to administer an effective anti-money laundering program.[1]

II. Background

FinCEN exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 (the Act) and other legislation, which legislative framework is commonly referred to as the ''Bank Secrecy Act'' (BSA),[2] which authorizes the Secretary of the Treasury (Secretary) to require financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism'' [3] The Secretary has delegated to the Director of FinCEN the authority to implement, administer and enforce compliance with the BSA and associated regulations.[4] FinCEN is authorized to impose AML program requirements on financial institutions,[5] as well as to require financial institutions to maintain procedures to ensure compliance with the BSA and FinCEN's implementing regulations or guard against money laundering.[6]

As reflected in recent guidance and enforcement actions, the cornerstone of a strong BSA/AML compliance program is the adoption and implementation of internal controls, which include comprehensive CDD policies, procedures, and processes for all customers, particularly those that present a high risk for money laundering or terrorist financing.[7] As

[1] *See, e.g.,* ''Anti-Money Laundering Programs for Insurance Companies,'' 31 CFR 1025.210(b)(1).

[2] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 1957, and 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

[3] 31 U.S.C. 5311.

[4] Treasury Order 180–01 (Sept. 26, 2002).

[5] 31 U.S.C. 5318(h)(2).

[6] 31 U.S.C. 5318(a)(2).

[7] FIN–2010–G001, ''Guidance on Obtaining and Retaining Beneficial Ownership Information, March 5, 2010, p.1 (''Beneficial Ownership Guidance''). *See also* Federal Financial Institution Examination Council Bank Secrecy Act Anti-Money Laundering Examination Manual (2010) (''FFIEC Manual''), available at: *http://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf;* Financial Industry

part of their basic business model, financial institutions seek at some level to identify their customers and their needs in order to best service them. The requirement that a financial institution know its customers, and the risks presented by its customers, is basic and fundamental to the development and implementation of an effective BSA/AML compliance program.[8] In particular, appropriate CDD policies, procedures, and processes assist a financial institution in identifying, detecting, and evaluating unusual or suspicious activity.[9] Furthermore, financial institutions may not be able to perform effective risk assessments of their customers or account bases without conducting adequate due diligence throughout customer relationships.

As discussed in more detail below, despite the basis for a CDD obligation implicit in BSA requirements, such as the AML program and suspicious activity reporting (SAR) rules, FinCEN believes that issuing an express CDD rule that requires financial institutions to perform CDD, including an obligation to categorically obtain beneficial ownership information, may be necessary to protect the United States financial system from criminal abuse and to guard against terrorist financing, money laundering and other financial crimes. Despite efforts to highlight and clarify CDD and beneficial ownership expectations over the past several years, FinCEN is concerned that there is a lack of uniformity and consistency in the way financial institutions address these implicit CDD obligations and collect beneficial ownership information within and across industries. In the absence of a broader definition of the term ''beneficial owner,'' in particular a definition that can be applied across lines of business and customer categories in the context of CDD, it may be difficult for a financial institution to (1) identify the risk scenarios that would require the identification of beneficial owners; and (2) collect sufficient information to adequately address identified risk. The lack of consistency and uniformity also severely limits the ability of financial institutions to rely on the CDD efforts of other financial institutions, which would promote greater efficiency and eliminate instances of duplication of effort in transactions involving multiple financial institutions.

FinCEN believes that an explicit CDD program rule codifying, clarifying and (with respect to beneficial ownership information) strengthening existing CDD expectations for U.S. financial institutions could enhance efforts to combat money laundering, terrorist financing, tax evasion and other financial crimes by:

(i) Strengthening the ability of financial institutions to identify and report illicit financial transactions and comply with all existing legal requirements, including FinCEN regulations implementing the BSA, the International Emergency Economic Powers Act (IEEPA),[10] and related authorities;

(ii) Promoting consistency in the implementation of, examination for, and enforcement of CDD program requirements across and within sectors of the U.S. financial system;

(iii) Assisting financial investigations by law enforcement, particularly by enhancing the availability of beneficial ownership and other information held by U.S. financial institutions;

(iv) Facilitating reporting and investigations in support of tax compliance; and

(v) Promoting global financial transparency and efforts to combat transnational illicit finance, consistent with international standards.

We are exploring an express CDD program rule as one key element of a broader U.S. Department of the Treasury strategy to enhance financial transparency in order to strengthen efforts to combat financial crime, including money laundering, terrorist financing, and tax evasion. Illicit actors continue to create legal entities, masking beneficial ownership information in order to facilitate access to the financial system and conduct financial crimes. Enhancing financial transparency to address such ongoing abuse of legal entities requires a broad approach. Other key elements of this strategy include: (i) Improving the availability of beneficial ownership information of legal entities created in the United States; and (ii) facilitating global implementation of international standards regarding beneficial ownership of legal entities and trusts and CDD by financial institutions.

While these three elements of the U.S. government's strategy for combating criminal abuse of legal entities are proceeding independent of each other, together they establish a comprehensive approach to effectively combat the criminal abuse of legal entities. As such, strengthening CDD program requirements for financial institutions complements the Administration's ongoing work with Congress to adopt legislation that would require the collection of beneficial ownership information at the time that legal entities are created in the United States. These efforts are also consistent with Treasury's ongoing work with the Group of Twenty Finance Ministers and Central Bank Governors (G20), the Financial Action Task Force (FATF), and other financial centers around the world to clarify and strengthen implementation of international standards on identifying and understanding beneficial ownership, particularly with respect to CDD by financial institutions and the creation of legal entities.

The Importance of CDD in Strengthening the Ability of Financial Institutions To Deter Illicit Transactions and Comply With Existing Legal Requirements

The establishment and maintenance of strong AML programs that include CDD policies, procedures, and processes has been a long-standing regulatory and supervisory expectation of certain Federal financial regulatory agencies, and is implicit in regulations requiring financial institutions to maintain an effective BSA compliance program that is reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements of the BSA.[11] An effective CDD program should provide a financial institution with sufficient information to develop a customer risk profile that can then be used by the financial institution to identify higher-risk customers and accounts, including customers and accounts subject to special or enhanced due diligence requirements.[12] The financial

Regulatory Authority, Updated AML Template for Small Firms (Jan. 2010) (''FINRA Small Firm Template''), available at *http://www.finra.org/Industry/Issues/AML/p006340;* National Association of Securities Dealers, Notice to Members 02–21 at 7 (Apr. 2002) (''NASD NTM 02–21'').

[8] *See supra* note 7.

[9] *See supra* note 7.

[10] Title II of Public Law 95–223, codified at 50 U.S.C. 1701–1707.

[11] *See, e.g.,* FFIEC Manual, FINRA Small Firm Template, NASD NTM 02–21.

[12] *See, e.g.,* FFIEC Manual, pp. 63–66; Beneficial Ownership Guidance; FIN–2006–G009, Application of the Regulations Requiring Special Due Diligence Programs for Certain Foreign Accounts to the Securities Industries (May 10, 2006) (''Finally, we remind securities and futures firms that the correspondent account rule supplements their anti-money laundering obligations—it does not supersede such obligations. *A securities or futures firm's anti-money laundering program should contain policies, procedures, and controls for conducting appropriate, ongoing due diligence on foreign entities including, among other things, whether or not they are foreign financial institutions for the purposes of the correspondent account rule.* Such policies, procedures, and

Continued

institution also should apply appropriate internal controls to identify and investigate unusual and suspicious activity and make an informed decision whether or not to file a SAR.[13] In the event that a financial institution files a SAR, CDD information collected could enhance the information included in the SAR and thereby enhance law enforcement's ability to initiate and pursue the successful investigation and prosecution of criminal activity. The failure to obtain adequate CDD information may impede a financial institution's ability to detect and report suspicious or unusual activity or provide information in a filing that is useful to law enforcement. Several of the consent orders and enforcement actions issued over the last few years have identified the lack of effective CDD policies, procedures, and processes, or the underlying elements thereof, as rendering AML programs inadequate, being a significant deficiency, and an underlying factor in supervisory actions.[14]

Although appropriate and adequate CDD policies, procedures, and processes have generally been an expectation of the Federal financial regulatory agencies, FinCEN believes that an express CDD program rule will strengthen compliance with and enforcement of CDD program requirements by clarifying, consolidating, and harmonizing such agencies' minimum expectations with respect to CDD policies, procedures, and processes, including the fundamental elements necessary for an effective CDD program.

As described in detail below, FinCEN believes that one fundamental element necessary for an effective CDD program is obtaining beneficial ownership information for all account holders, possibly subject to limited exceptions based upon lower risk. An express CDD program rule would enable FinCEN to establish such a clear requirement, thereby strengthening the ability of financial institutions to detect and address suspicious activity. Establishing a categorical beneficial ownership information requirement through a CDD program rule also would address current concerns regarding potential confusion or inconsistency across financial sectors regarding obligations to obtain beneficial ownership information outside of statutorily prescribed circumstances. Recent industry commentary and feedback indicated a lack of common understanding and consistent practice across the financial services industry for collecting beneficial ownership information. For example, an industry survey conducted by FinCEN in 2008 indicated certain inconsistencies in financial institutions' practices related to collecting and maintaining beneficial ownership information both within and across industries. Moreover, industry commentary following the issuance of the Beneficial Ownership Guidance[15] indicated that there is at least some question about the nature of a financial institution's obligation to conduct CDD and to obtain beneficial ownership information.[16]

The Importance of CDD in Assisting Criminal Investigations

As discussed previously, an effective CDD program is important in facilitating effective suspicious activity monitoring, which in turn facilitates the filing of quality SARs containing information that is both meaningful and useful to law enforcement. The lack of such information has been a source of growing concern to law enforcement in its efforts to conduct successful criminal investigations, both domestically and in conjunction with international counterparts. For example, the Chief of DOJ's Asset Forfeiture and Money Laundering Section (AFMLS) has stated that, with respect to international law enforcement cases, ''the lack of beneficial ownership information can also hamper our ability to respond to requests for assistance from our foreign counterparts. This problem not only damages our reputation, but also undermines our efforts to join with foreign counterparts in a global offensive against organized crime and terrorism.'' [17]

The Importance of CDD in Facilitating Tax Reporting, Investigations and Compliance

The collection of CDD information by financial institutions is also fundamentally important in facilitating tax reporting, investigations and compliance. For example, a variety of information may be needed in a tax enquiry including information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts. The United States has long been a global leader in establishing and promoting the adoption of international standards for transparency and information exchange to combat cross-border tax evasion and other financial crimes, and strengthening the CDD procedures of financial institutions is an important part of that effort. Moreover, the United States has an extensive network of agreements for the exchange of tax information that meet international standards. In addition, new tax reporting provisions under the Foreign Account Tax Compliance Act (FATCA)[18] would require overseas financial institutions to identify U.S. account holders, including foreign entities with significant U.S. ownership, and to report certain information about their accounts to the IRS.[19] In many

controls should include, where appropriate, ascertaining the foreign entity's ownership and the nature of its business. *In high-risk situations involving any account,* an anti-money laundering program should include provisions for obtaining any necessary and appropriate information about the customers underlying such an account.'') (emphasis added).

[13] *See, e.g.,* 31 CFR 1021.210(b)(2)(i).

[14] *See, e.g.,* Pacific National Bank, Miami, FL, Comptroller of the Currency (OCC) #2011–021 (2011); HSBC Bank USA, N.A., McLean, VA, OCC #2010–199 (2010); Consent Order issued by the OCC in the Matter of Wachovia Bank, N.A., Charlotte, NC. OCC #2010–037 (2010); Public Savings Bank, Huntington Valley, PA, FDIC–11–107b (2011); First Financial Holding Co., Ltd, Taipei, Taiwan, Board of Governors of the Federal Reserve System (FRB), Docket Nos. 11–019–WA/RB–FH et seq. (2011); Bank Hapoalim, B.M., Tel Aviv, Israel, FRB, Docket Nos. 09–083–WA/RB–FB (2009); Westfield Bank, Westfield, MA, Office of Thrift Supervision Order No. NE–11–20 (2011); Chapin, Davis, Baltimore MD, FINRA Case #2010021065701 (2011); FINRA, Letter of Acceptance, Waiver and Consent No. 2007007328101, Terra Nova Financial, LLC (2009); FINRA, Letter of Acceptance, Waiver and Consent No. 2007007139501, Synergy Investment Group, LLC (2009); FINRA, Letter of Acceptance, Waiver and Consent No. 2008011725001, ViewTrade Securities, Inc., (2009); In the Matter of I Trade FX, NFA Case No. 08–BCC–014 (filed April 24, 2009) (finding that I Trade failed to follow up on red flags and investigate suspicious activity, including following up where the customer's account had inflows of funds well beyond the known income or resources of the customer); In the Matter of Forex Capital Markets LLC (FXCM), NFA Case No. 11–BCC–016 (filed Aug. 12, 2011) (consent order based on allegations in the complaint that FXCM failed to conduct an investigation of suspicious activity involving unexplained wire activity, unexplained transfers between accounts, and deposits that were in excess of the clients' net worth and/or liquid assets identified on their opening account documents).

[15] *Supra* note 7.

[16] *See, e.g.,* Letter from the Investment Company Institute, the Securities Industry and Financial Markets Association, and the Futures Industry Association (June 9, 2010), available at: *http://www.ici.org/pdf/24354.pdf.*

[17] Shasky Calvery, Jennifer, ''Priorities and Initiatives of the Asset Forfeiture and Money Laundering Section (AFMLS), U.S. Department of Justice'' The SAR Activity Review, Trends, Tips, and Issues, p. 44. (May 2011), available at *http://www.fincen.gov/news_room/rp/files/sar_tti_19.pdf.*

[18] Hiring Incentives to Restore Employment Act of 2010, Pub.L. 111–147, Section 501(a).

[19] *See generally,* Internal Revenue Service, ''Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities,'' REG–121647–10 (February 8, 2012), available at *http://www.irs.gov/pub/newsroom/reg-121647-10.pdf.*

cases, implementing these provisions will require the cooperation of foreign governments to address impediments under foreign law. Requiring U.S. financial institutions to obtain similar ownership information would put the United States in a better position to work with foreign governments to combat offshore tax evasion and other financial crimes.

The Importance of CDD in Promoting Financial Transparency and Protecting the Financial System From Abuse Consistent With International Standards

An effective CDD program supports effective suspicious activity monitoring, strengthens national anti-money laundering and counter-financing of terrorism (AML/CFT) regimes, and promotes the integrity of the international financial system as a whole. This importance was recognized by the G20 in several Leaders' Statements supporting the strengthening of CDD procedures. During the Pittsburgh Summit in 2009, the G20 asked the Financial Action Task Force (FATF) [20] to ''help detect and deter the proceeds of corruption by prioritizing work to strengthen standards on customer due diligence.'' [21] In November 2010, the G20 specifically urged the FATF to clarify and strengthen beneficial ownership as an element of CDD and as a key component of its Anti-Corruption Action Plan.[22] Additionally, effective adoption and implementation of CDD by financial institutions is consistent with the FATF's global AML/CFT standards to combat money laundering and the financing of terrorism.[23]

The G20 recognition of the importance of CDD is also reflected in the work of other international standard setting bodies. In October 2001, the Basel Committee on Banking Supervision (BCBS) published a report on CDD, supporting the FATF's efforts in fighting money laundering. The report states that sound CDD-related procedures are not only critical in combating financial crime, but ''critical in protecting the safety and soundness of banks and the integrity of the banking systems.'' [24] Similarly, in light of the FATF's and other international organizations' work, in October 2002 the International Organization of Securities Commissions (IOSCO) established a Task Force on Client Identification and Beneficial Ownership to survey existing securities regulatory regimes relating to the identification of clients and beneficial owners and to develop principles that address aspects of the CDD process.[25] In May 2004, IOSCO published a report describing principles for client identification and beneficial ownership in the securities industry.[26] Among other things, the report noted that while ''[t]he CDD process is a key component of securities regulatory requirements intended to achieve the principal objectives of securities regulation, the protection of investors; ensuring that markets are fair, efficient and transparent; and the prevention of the illegal use of the securities industry,'' it also ''contributes to the pursuit of other policy goals related to the prevention of the illegal use of the securities industry such as money laundering and the financing of terrorism that are generally within the competence of other authorities.'' [27]

III. Treasury's Efforts To Address CDD, Including Beneficial Ownership Issues

The identification of beneficial ownership interests as noted previously has become increasingly relevant to AML/CFT efforts both within the United States and beyond its borders. Treasury also has consistently engaged with the Federal financial regulatory agencies and financial institutions for the purpose of understanding and clarifying the efforts of financial institutions with respect to CDD and identifying beneficial ownership interests. Most notably:

i. Following the adoption of the Act in 2001, the Treasury Department and the federal financial regulatory agencies engaged the financial industry in order to develop customer identification program (''CIP'') and special due diligence requirements in accordance with Sections 326 and 312 of the Act, respectively.

ii. In November 2006, FinCEN issued a report on ''The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies.'' The report highlights the need for financial institutions to assess and manage the risks of providing financial services to shell companies in order to identify and report potential money laundering activity.[28]

iii. In 2008, FinCEN submitted a survey to industry to solicit feedback on how and when financial institutions obtain and retain beneficial ownership information. The survey results indicated certain inconsistencies in financial institutions' understanding of requirements related to collecting and maintaining beneficial ownership information both within and across industries.

iv. In November 2009, the Department of the Treasury's then-Assistant Secretary, and current Under Secretary, David Cohen, testified before the Senate Committee on Homeland Security and Governmental Affairs and outlined Treasury's comprehensive plan, the elements of which are designed to enhance the transparency of legal entities with respect to beneficial ownership. Treasury's plan involves: (i) Working with Congress to promote legislation that enhances transparency of legal entities in the company formation process; (ii) clarifying and strengthening requirements for U.S. financial institutions with respect to the beneficial ownership of legal entity accountholders, and (iii) clarifying and facilitating the implementation of international standards regarding beneficial ownership, including with respect to company formation by jurisdictional authorities and CDD by financial institutions.

v. In March 2010, FinCEN, jointly with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission, and in consultation with staff of the Commodity Futures Trading Commission, issued the Beneficial

[20] The FATF, an inter-governmental organization of which the United States, thirty-four other jurisdictions and two regional organizations are members, is the global standard setter and policy-making body for AML/CFT. *http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html.*

[21] Group of Twenty Finance Ministers and Central Bank Governors, ''Leaders' Statement: The Pittsburgh Summit'' (September 24–25, 2009).

[22] *See* Group of Twenty Finance Ministers and Central Bank Governors, Annex III, ''G20 Anti-Corruption Action Plan: G20 Agenda for Action on Combating Corruption, Promoting Market Integrity, and Supporting a Clean Business Environment,'' p. 2 (November 11–12, 2010).

[23] Financial Action Task Force, ''International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation—The FATF Recommendations,'' February 2012, Recommendation 10, pp. 14–15, available at *http://www.fatf-gafi.org/dataoecd/49/29/49684543.pdf.* Following a review to update and strengthen global AML/CFT standards, the FATF issued its revised Recommendations on February 16, 2012.

[24] Basel Committee on Banking Supervision, ''Customer Due Diligence for Banks,'' 2001, p. 2, available at *www.bis.org/publ/bcbs85.pdf.*

[25] International Organization of Securities Commissions, ''Principles on Client Identification and Beneficial Ownership for the Securities Industry,'' p. 2 (May 2004).

[26] *Id.*

[27] *Id.*

[28] Financial Crimes Enforcement Network, ''The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies,'' (November 2006), available at *http://www.fincen.gov/news_room/rp/files/LLCAssessment_FINAL.pdf.*

Ownership Guidance to clarify and consolidate existing regulatory expectations for obtaining beneficial ownership information for certain accounts and customer relationships.[29]

vi. In November 2011, the Department of the Treasury's Assistant Secretary Daniel Glaser testified before the Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism to discuss efforts to combat international organized crime. In his testimony, Assistant Secretary Glaser discussed the importance of financial transparency in mitigating threats posed by transnational organized crime and other forms of illicit finance as well as the Treasury Department's work to clarify and strengthen CDD requirements for financial institutions.

vii. In February 2012, the Department of the Treasury's Deputy Assistant Secretary Luke Bronin testified before the House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security to discuss key vulnerabilities in the U.S. financial system related to transnational organized crime. The testimony included highlighting the importance of CDD as essential to an AML regime. Additionally, Deputy Assistant Secretary Bronin discussed the importance of effective implementation of CDD and the need to clarify, consolidate, and strengthen CDD requirements for financial institutions.

IV. Elements of CDD

Based on the past efforts outlined above and ongoing industry and regulatory consultation and outreach, FinCEN believes that an effective CDD program includes the following elements:

(i) Conducting initial due diligence on customers, which includes identifying the customer, and verifying that customer's identity as appropriate on a risk basis, at the time of account opening;

(ii) Understanding the purpose and intended nature of the account, and expected activity associated with the account for the purpose of assessing risk and identifying and reporting suspicious activity;

(iii) Except as otherwise provided, identifying the beneficial owner(s) of all customers, and verifying the beneficial owner(s)' identity pursuant to a risk-based approach; and

(iv) Conducting ongoing monitoring of the customer relationship and conducting additional CDD as appropriate, based on such monitoring and scrutiny, for the purposes of identifying and reporting suspicious activity.

FinCEN's understanding of how U.S. financial institutions currently perform certain aspects of CDD in accordance with these elements under existing regulations and FinCEN's proposal for codifying these elements in a CDD rule are described below.

A. Identification and Verification of the Customer

Various AML obligations are dependent on financial institutions at least obtaining, and in some instances verifying, certain basic customer identification information. For example, financial institutions subject to the CIP rules implementing Section 326 of the Act must identify and verify the identity of certain ''customers'' seeking to open an account.[30] In identifying such customers, a financial institution must obtain the customer's name; for individuals, date of birth, address, and an identification number (*e.g.,* taxpayer identification number, passport number, or alien identification card number) and for a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office, or other physical location, and identification number.[31] For the purposes of the CIP requirement, the definition of ''customer'' is the accountholder, regardless of whether the accountholder is also the beneficial owner.[32]

In addition to identifying customers covered by the CIP rule, a financial institution's CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable such that the institution can form a reasonable belief that it knows the true identity of each customer.[33] These procedures must be based on the institution's assessment of the relevant risks, including those presented by the various types of accounts maintained by the institution, the various methods of opening accounts provided by the institution, the various types of identifying information available, and the institution's size, location, and customer base.[34] Further, the CIP must include procedures that describe when the financial institution will use documents, non-documentary methods, or a combination of both methods to verify a customer's identity.[35] In addition, for customer relationships where the customer is not an individual, based on the financial institution's risk assessment of the account, the financial institution must obtain information about the individuals with authority or control over such account.[36] Consistent with these explicit regulatory requirements and guidance, FinCEN is exploring an express customer identification and risk-based verification component of CDD, which does not create a new CIP obligation, but would be satisfied by compliance with the financial institution's current CIP obligations. The identification and verification component of a CDD requirement may state, generally:

> Covered financial institutions shall identify, and on a risk-basis verify, the identity of each customer, to the extent reasonable, such that the institution can form a reasonable belief that it knows the true identity of each customer.

If a financial institution is compliant with its current CIP obligations, a financial institution would be compliant with this part of the CDD program rule and therefore there will be no new or additional regulatory obligation. FinCEN notes that, although certain customers are exempt from the CIP requirements (*i.e.,* the customers that are excluded from the definition of ''customer'' for purposes of the CIP requirement),[37] those customers would not be exempt from the requirements to understand the nature and purpose of the account and to conduct ongoing monitoring. As discussed below, FinCEN is seeking comment on whether the beneficial ownership requirement

[29] *See generally,* supra note 7.

[30] *See* 31 CFR 1020.220(a), 1023.220(a), 1024.220(a), and 1026.220(a).

[31] *See* 31 CFR 1020.220(a)(2)(i)(A), 1023.220(a)(2)(i)(A), 1024.220(a)(2)(i)(A), and 1026.220(a)(2)(i)(A).

[32] *See, e.g.* 31 CFR 1023.100(d) and Customer Identification Programs for Broker-Dealers, 68 FR 25,113, 116 (May 9, 2003).

[33] 31 CFR 1020.220(a)(2), 1023.220(a)(2), 1024.220(a)(2), and 1026.220(a)(2).

[34] *Id.*

[35] 31 CFR 1020.220(a)(2)(ii), 1023.220(a)(2)(ii), 1024.220(a)(2)(ii), and 1026(a)(2)(ii).

[36] 31 CFR 1020.220(a)(2)(ii)(C); 1023.220(a)(2)(ii)(C); 1024.220(a)(2)(ii)(C); and 1026.220(a)(2)(ii)(C). This verification method applies only when the financial institution cannot verify the customer's true identity using the verification methods described in the rule. However, the preamble to the final CIP Rule noted that, in addition to the requirements of this paragraph, ''the due diligence procedures required under other provisions of the BSA or the securities laws may require broker-dealers to look through to owners of certain types of accounts.'' Customer Identification Programs for Broker-Dealers, 68 FR 25113, 116, n. 30 and accompanying text (May 9, 2003).

[37] Among other persons, the definition of ''customer'' for purposes of the CIP requirement excludes: Existing customers, as long as the financial institution has a reasonable belief that it knows the customer's true identity; Federally regulated banks; banks regulated by a state bank regulator; governmental entities; and publicly traded companies. *See, e.g.,* 31 CFR 1020.100(c)(2), 1023.100(d)(2), 1024.100(c)(2), 1026.100(d)(2).

should apply with respect to those exempt customers.

B. Understanding the Nature and Purpose of the Account

As a general business matter, financial institutions seek to understand the needs of their customers in order to serve them. Financial institutions should understand the nature and purpose of an account or customer relationship so that they can appropriately assess the risk presented by the relationship and appropriately monitor for suspicious activity. Pursuant to suspicious activity reporting procedures, financial institutions compare the available facts of a transaction or series of transactions, including their type, volume, and possible purpose, against the type of transaction in which the customer would normally be expected to engage.[38] In other words, in discerning whether a transaction or series of transactions is suspicious, a financial institution must determine if the activity varies from the normal activities or activities appropriate for the particular customer or class of customer, and has no apparent reasonable explanation.[39] FinCEN has also issued guidance highlighting the need to understand the nature and purpose of an account, in order to assess the risk and determine the appropriate level of due diligence for the account.[40] Accordingly, and in keeping with the SAR obligation and related regulatory guidance, FinCEN is specifically considering including an express obligation to understand the nature and purpose of the account or customer relationship as an element of a CDD program rule. This element of a CDD program rule may state, generally:

covered financial institutions shall understand the nature and purpose of the account and expected activity associated with the account for the purpose of assessing the risk and identifying and reporting suspicious activity.

Because in FinCEN's view, a financial institution must understand the nature and purpose of an account in order to assess risk and satisfy its obligation to appropriately detect and report suspicious activity, FinCEN does not believe that this will impose a new or additional requirement.

C. Obtaining Beneficial Ownership Information

Potential Beneficial Ownership Obligation Under a CDD Program Rule

Under existing FinCEN regulations, there are two limited situations where financial institutions are expressly obligated to obtain beneficial ownership information. Specifically, under the rules implementing Section 312 of the Act, there are two situations where certain ''covered financial institutions''[41] are required to take reasonable steps to obtain beneficial ownership information: (i) covered financial institutions that offer private banking accounts are required to take reasonable steps to identify the nominal and beneficial owners of such accounts;[42] and (ii) covered financial institutions that offer correspondent accounts for certain foreign financial institutions are required to take reasonable steps to obtain information from the foreign financial institution about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.[43]

In addition to these explicit requirements to obtain beneficial ownership information, under the CIP rules, a financial institution's CIP must address situations where, based on the financial institution's risk assessment of a new account opened by a customer that is not an individual, the financial institution will obtain information about individuals with authority or control over such account.[44] Moreover, FinCEN and the federal financial regulatory agencies have issued guidance stating that there are other situations when financial institutions should consider whether it is appropriate to obtain beneficial ownership information.[45]

Consistent with these explicit and implicit beneficial ownership information obligations, FinCEN is considering expanding the requirement to obtain beneficial ownership information to all customers. Such a beneficial ownership information requirement would constitute an essential element of an effective CDD program. This element of the CDD program rule may state, generally:

Except as otherwise provided, financial institutions shall identify the beneficial owner(s) of all customers, and verify the beneficial owners' identity pursuant to a risk-based approach.

FinCEN anticipates that it would provide additional guidance regarding customers that may be considered low risk (and therefore exempt for purposes of this beneficial ownership requirement), as well as identifying types of customers that may simply necessitate identification of the beneficial owner, and those that are of heightened risk requiring both identification and verification of the beneficial owner. Similar to the CIP requirement, FinCEN also anticipates that it would provide guidance to financial institutions on what they should do in the event they are unable to identify or verify a beneficial owner.

This component of the CDD program rule would create a new express regulatory obligation to obtain beneficial ownership information, given the limited circumstances in which financial institutions are currently expressly obligated to obtain this information.

Potential Additional Definition of Beneficial Owner

In the limited instances where reasonable steps to obtain beneficial ownership information are currently required, FinCEN has defined the beneficial owner of an account as ''an individual who has a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account * * *''[46] This definition was designed specifically for accounts referred to above where beneficial ownership information is required and may not be useful for application to the wide range of other accounts offered by financial institutions.

In addition to FinCEN's current definition of beneficial owner, federal regulatory agencies[47] and various international organizations and foreign jurisdictions define beneficial ownership in ways that may be useful

[38] *See, e.g.,* 31 CFR 1020.320(a)(2)(iii), 1023.320(a)(2)(iii), 1024.320(a)(2)(iii), and 1026.320(a)(2)(iii).

[39] *See* 61 FR 4328 (February 5, 1996).

[40] *See, e.g.,* FIN–2006–G009, Application of the Regulations Requiring Special Due Diligence Programs for Certain Foreign Accounts to the Securities Industries (May 10, 2006). (''A clearing firm's anti-money laundering program should contain risk-based policies, procedures, and controls for monitoring introduced business, which includes knowing whether the introducing firm may establish or maintain correspondent accounts for foreign financial institutions and the nature and scope of that business, including the nature of the introducing firm's account base.'') *See also* FIN–2008–G002, Customer Identification Program Rule No-Action Position Respecting Broker-Dealers Operating Under Fully Disclosed Clearing Agreements According to Certain Functional Allocations (Mar. 4, 2008).

[41] 31 CFR 1010.605(e)(1).

[42] 31 CFR 1010.620(b)(1).

[43] 31 CFR 1010.610(b)(1)(iii)(A).

[44] *See supra* note 36.

[45] *Supra* note 7.

[46] 31 CFR 1010.605(a).

[47] Securities Exchange Act Rule 13d–3, 17 CFR 240.13d–3.

in assisting financial institutions with understanding beneficial ownership in the CDD framework.[48] For purposes of the CDD program requirement discussed above, and not affecting the limited instances in which beneficial ownership information is currently required, FinCEN is considering a definition to be used that would, in the case of legal entities, include:

(1) Either:

(a) Each of the individual(s) who, directly or indirectly, through any contract, arrangement, understanding, relationship, intermediary, tiered entity, or otherwise, owns more than 25 percent of the equity interests in the entity; or

(b) If there is no individual who satisfies (a), then the individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, intermediary, tiered entity, or otherwise, has at least as great an equity interest in the entity as any other individual, and

(2) The individual with greater responsibility than any other individual for managing or directing the regular affairs of the entity.

FinCEN anticipates that such a specific and limited definition of beneficial ownership may be necessary to accommodate the vast array of complex ownership structures of legal entities[49] that may become customers of financial institutions. FinCEN further anticipates that this specific limited definition would be applied generally to legal entity customers pursuant to the explicit beneficial ownership requirement described above, while the existing definition would continue to be applied for purposes of 31 CFR 1010.610 and 1010.620.

FinCEN emphasizes that the potential new beneficial ownership requirement and definition discussed in this ANPRM is not intended to supersede existing BSA obligations to obtain beneficial ownership information.

Potential Exemptions From Beneficial Ownership Requirement

FinCEN recognizes that there may be instances in which obtaining beneficial ownership information about a legal entity customer may not be warranted given the AML/CFT risk or other factors associated with that entity. For example, FinCEN is considering whether legal entity customers that are exempt from identification as customers under the CIP Rules (*e.g.,* financial institutions regulated by a federal regulatory agency and publicly traded companies), should also be exempt from the beneficial ownership requirement, both because beneficial ownership information for these entities may not be particularly relevant to the money laundering risks associated with such entities, and because their beneficial ownership information is readily available to law enforcement and regulators. Accordingly, FinCEN seeks comment on a potential exemption from the beneficial ownership requirement for legal entity customers that are exempt under the CIP Rules.

FinCEN recognizes that financial institutions may not have beneficial ownership information on existing customers (which are also exempt from the CIP Rules), outside those requiring such information, and is also considering whether and how a potential beneficial ownership requirement would apply to existing customers of financial institutions. In this regard, FinCEN is considering adopting a risk-based approach similar to that utilized in the case of the CIP Rules, whereby this potential requirement would apply to all new customers. With respect to existing customers, FinCEN is seeking comment on how a beneficial ownership identification requirement could be phased into ongoing CDD.

Beneficial Owners of Assets in Accounts Held by Intermediaries

Given the particular money laundering risks posed by some legal entities, the beneficial ownership requirement and potential definition of ''beneficial owner'' under consideration as discussed above are designed to identify the beneficial owner of a legal entity customer, as distinct from the beneficial owner of assets in an account. However, there may be instances in which obtaining information about the beneficial owners of assets in an account may be warranted instead, such as where a legal entity (*e.g.* a foreign or regulated or unregulated domestic financial institution) opens an account for the benefit of its customers (as opposed to for its own benefit), as those customers could pose a money laundering risk through their ability to access the financial system through that account relationship. In such instances, FinCEN recognizes that the potential definition of ''beneficial owner'' described above may not generally be relevant or appropriate for AML/CFT purposes.

Accordingly, FinCEN seeks comment on potential alternative definitions of ''beneficial owner'' in instances where obtaining information about the beneficial owners of assets in an account may be warranted. FinCEN also seeks comment on how financial institutions currently address the potential money laundering risks presented by the beneficial owners of assets in an account pursuant to financial institutions' existing legal obligations and expectations under FinCEN's regulations and related guidance, whether there are any issues or practical difficulties in doing so, and whether further guidance or rulemaking on this particular issue would be beneficial.

FinCEN recognizes that there may be impediments to identifying the beneficial owner of assets in an account in certain instances and account structures (*e.g.,* omnibus accounts or other intermediated accounts), such as where there are layers of intermediated relationships or where there are numerous beneficial owners of assets in the account. FinCEN seeks comment on the difficulties associated with identifying beneficial owners of assets of such an account. FinCEN further requests comment on whether a potential explicit obligation to identify the beneficial owners of assets in an account should be based upon the financial institution's risk assessment of the customer, or whether a more specific obligation would be appropriate.

Customer Acting as an Agent

FinCEN believes that, although the use of legal entities to mask beneficial ownership presents the primary illicit finance vulnerability and accordingly the need for beneficial ownership identification, the question of beneficial ownership can also arise in the context of accounts established by an individual or entity (*e.g.* law or accounting firm) which could be acting on behalf of another individual or individuals without disclosing this fact. FinCEN is considering how to best address this potential vulnerability. A possible solution would be to require any individual or entity (other than a regulated financial institution) opening an account at a financial institution to state that he, she, or it is not acting on behalf of any other person. Such approach would be analogous to longstanding FinCEN transaction reporting requirements, under which a financial institution must record identifying information with respect to

[48] *See e.g.,* FATF Recommendations, General Glossary, p. 110, available at *http://www.fatf-gafi.org/dataoecd/49/29/49684543.pdf;* European Parliament and Council, ''Third European Union Money Laundering Directive,'' 2005/60/EC, Article 3(6) (October 26, 2005); United Kingdom Money Laundering Regulations, 2007 No. 2157 Part 2, p. 10 (December 15, 2007).

[49] Legal entities would generally include all entities that are established or organized under the laws of a state or of the United States, including corporations, limited liability companies, limited partnerships, and similar entities.

''any person or entity on whose behalf such transaction is to be effected.'' [50] For individuals and entities acting on behalf of another person, the beneficial ownership element of a CDD program requirement would apply to the person on whose behalf the account is being opened. FinCEN seeks comment on this approach, as well as suggestions for other approaches.

Obtaining and Verifying Beneficial Ownership Information

FinCEN anticipates that, in general, the individual opening the account on behalf of a legal entity customer will identify its beneficial owner, and that covered financial institutions will generally be able to rely upon the beneficial ownership information presented by the customer, absent information that indicates reason to question the veracity of the information or an elevated risk of money laundering or terrorist financing. Verification of the beneficial owner could have two possible meanings. One meaning would require verifying the identity of the individual identified by the customer as the beneficial owner of the account, i.e., verifying the existence of the identified beneficial owner. This would presumably be accomplished by using procedures similar to those currently required pursuant to the CIP Rules (e.g., obtaining a copy of a government-issued identity document of the individual), but applied to the identified beneficial owner rather than to an individual customer. The second possible meaning would require that the financial institution verify that the individual identified by the customer as the beneficial owner, is indeed the beneficial owner of the customer, i.e., to verify the status of the identified individual. FinCEN is considering that, in each case the required procedures would need to be reasonable and practicable, and sufficient to form a reasonable belief that the financial institution knows the identity or status, as the case may be, of the beneficial owner. FinCEN is seeking comment below regarding these two possible meanings, and the appropriateness and challenges associated with each.

D. Conducting Ongoing CDD

Due diligence is an on-going obligation, and for this reason financial institutions should have in place policies and procedures to maintain the accuracy of their customer risk profiles and risk assessments. Financial institutions should update CDD information as necessary based on the overall risk of the customer, and may need to update or conduct additional CDD in association with specific events that would result in material changes in a customer's risk profile, such as volume of alerts or red flags relating to the account, change in control, change in occupation or account purpose, or the occurrence of a transaction or activity that is unusual for the customer.

Pursuant to suspicious activity reporting requirements, financial institutions must report a transaction that: (i) Involves funds derived from illegal activity or is conducted to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade any federal law or regulation or to avoid any federal transaction reporting requirement; (ii) is designed to evade any requirements of the BSA or its implementing regulations; or (iii) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.[51] Financial institutions' ongoing monitoring and due diligence are critical elements of effectively complying with current suspicious activity reporting requirements.

FinCEN is exploring an ongoing monitoring and due diligence requirement as an express element of a CDD program rule. This element of the CDD program rule may state:

> Consistent with its suspicious activity reporting requirements, covered financial institutions shall establish and maintain appropriate policies, procedures, and processes for conducting on-going monitoring of all customer relationships, and additional CDD as appropriate based on such monitoring for the purpose of the identification and reporting of suspicious activity.

FinCEN understands that the obligations in this potential element of an ongoing CDD monitoring rule are already included in the requirements contained in the AML program and SAR rules and, therefore, there would be no new or additional requirement.

V. Issues for Comment

Existing CDD requirements are an implicit, but essential, part of complying with AML program regulations. However, as discussed above, FinCEN is considering expressly requiring that financial institutions conduct CDD as part of their existing AML program requirements, and as part of this requirement, collect beneficial ownership information for all customers, with limited exceptions. For this reason, FinCEN is seeking comment from industry and other interested parties concerning the implementation of CDD programs in general pursuant to existing rules and guidance described above. FinCEN is also interested in better understanding what types of CDD information are currently collected, specifically in relation to beneficial ownership information, and under what circumstances the information is collected.

1. Aside from policies and procedures with respect to beneficial ownership, what changes would be required in a financial institution's CDD processes as a result of the adoption by FinCEN of an express CDD rule as described in this ANPRM?

Aside from beneficial ownership, FinCEN believes that the other elements of a potential CDD rule as described above are already being implemented by a substantial number of financial institutions, due to three of the four proposed elements of CDD being explicit or implicit under existing FinCEN regulations and related regulatory and supervisory expectations. For this reason, FinCEN believes an explicit regulatory requirement with respect to these elements of CDD should not be onerous, particularly for those industries where CIP requirements are already in place. However, FinCEN is interested in obtaining a better understanding from all industry sectors of anticipated issues and concerns that may arise from creating an explicit regulatory requirement with respect to these three potential elements of CDD, including any additional costs that would be incurred to comply with these three elements.

2. What changes would be required in a financial institution's CDD process, as a result of the adoption by FinCEN of a categorical requirement to obtain (and in some cases verify) beneficial ownership information, as described in this ANPRM? Is FinCEN's suggested alternate definition of ''beneficial owner,'' discussed above, a clear and easily understood definition for the purpose of obtaining beneficial ownership information for legal entities in the context of complying with a CDD obligation? If not, would you suggest a better definition? In addition, how do financial institutions currently address the money laundering risks that might be presented by the beneficial owners of assets in an account held by an

[50] *See,* 31 CFR 1010.312.

[51] *See generally,* 31 CFR 1020.320(a)(2)(i)–(iii), 1023.320(a)(2)(i)–(iii), 1024.320(a)(2)(i)–(iii), and 1026.320(a)(2)(i)–(iii).

intermediary, what difficulties are presented in this regard, would further guidance or regulation be appropriate, should any requirement in this area be risk-based, and how should FinCEN define beneficial ownership for this purpose?

FinCEN is seeking comment on the impact on financial institutions of the adoption of a categorical requirement to obtain beneficial ownership information for most customers, as described in this ANPRM. FinCEN is also seeking comment as to whether financial institutions have concerns regarding the proposed alternative definition of beneficial ownership discussed above and whether it may cause difficulties with financial institution compliance with a categorical beneficial ownership obligation. In addition, FinCEN is seeking comment on whether it would be confusing to adopt an alternate definition of beneficial ownership as proposed for a general CDD program requirement, except in the limited instances in which the current definition for beneficial owner that is required pursuant to 31 CFR 1010.610 and 1010.620 would continue to be used, and whether the potential beneficial ownership requirement and associated potential definition would be relevant with respect to certain types of intermediated accounts, such as omnibus accounts, and if not, what definition would be more appropriate. Also, please comment on appropriate exemptions from a potential beneficial ownership requirement, including with respect to existing customers, and the practicality of phasing a requirement into ongoing CDD. Please also comment on possible approaches to preventing the misuse of a financial institution account by an individual or entity acting on behalf of another without disclosing this fact. Finally, please comment regarding the costs of complying with a categorical beneficial ownership requirement, in the case where the beneficial ownership requirement would apply only to new customers, as well as where it would apply to all existing customers.

3. Under what circumstances does a financial institution currently obtain beneficial ownership information on a customer or accountholder?

Current FinCEN regulations require financial institutions to obtain beneficial ownership information as a component of CDD on private banking and foreign correspondent customers. Existing BSA obligations, including regulatory and supervisory expectations, require financial institutions to collect this information, as appropriate, as part of CDD/EDD on higher-risk customers. For this reason, FinCEN requests information from industry regarding the circumstances under which a financial institution currently determines that it is necessary or prudent to obtain beneficial ownership information from a customer, who is neither a private banking nor foreign correspondent customer, whether as part of their customer identification program procedures, anti-money laundering program requirements, transaction/account monitoring procedures, or for other purposes. For example, are there types of customers, types of accounts, levels of account activity, forms of suspicious activity, or other indicia that lead a financial institution to make decisions as to when there may be no risk, moderate risk or substantial risk in not obtaining beneficial ownership information?

4. How do financial institutions currently obtain beneficial ownership information?

FinCEN requests information on how financial institutions collect such information and, specifically, what methods, both documentary and non-documentary, are used to identify and/or verify the beneficial owner (e.g. public documents, identification numbers, etc.). When or if financial institutions collect beneficial ownership information other than as specifically required pursuant to 31 CFR 1010.610 and 1010.620, FinCEN requests comments on whether financial institutions use the same definition of beneficial ownership as that which is applicable under these regulations for private banking and certain foreign correspondent accounts, or other definitions, such as those referenced above in the description of a potential additional definition of beneficial owner.

5. Is the current, primarily risk-based, approach to a CDD program requirement resulting in varied approaches across industries or varied approaches within industries?

FinCEN is seeking comment on whether financial institutions are aware of varied approaches either across or within industries relating to current CDD expectations, including beneficial ownership obligations. For example, FinCEN seeks comment on whether financial institutions are aware of circumstances in which one financial institution may turn down an account due to lack of beneficial ownership information, later to learn that the accountholder has established an account with another institution that did not require the accountholder to provide beneficial ownership information. Alternatively, are there circumstances under which financial institutions have concerns about their ability to rely on CDD undertaken by other financial institutions due to inconsistent practices or expectations?

6. Are there other elements of CDD that would be more effective in facilitating compliance with AML program requirements and other obligations under FinCEN's regulations?

The four elements of CDD listed above were selected based on consistency with existing regulatory requirements and expectations; the importance of beneficial ownership information and other elements of CDD to financial investigations pertaining to money laundering, terrorist financing, and tax evasion, and IEEPA violations; and, consistency with international standards and financial transparency. FinCEN seeks comment on whether other elements of CDD, aside from those listed in this ANPRM would be more effective and efficient in advancing these interests.

7. What information should be required in order to identify, and verify on a risk basis, the identity of the beneficial owner?

Should the required identification information on beneficial owners be consistent with the customer identification information currently required under the CIP regulations (*i.e.,* name, address, date of birth and identification number) or should additional information be required? In addition, what should be required of financial institutions to verify the identity of the beneficial owner? FinCEN is exploring two possible meanings for verification of beneficial ownership information: One meaning would require verifying the identity of the natural person identified by the customer to be the beneficial owner. This would require that the financial institution, for example, obtain a copy of a government-issued identification document bearing a photograph of the individual identified by the customer as its beneficial owner, to verify that the individual exists. The second meaning would require verifying that the individual identified by the customer as its beneficial owner is, in fact, the beneficial owner of the legal entity customer. FinCEN is seeking comment as to challenges posed by each of these possible verification requirements.

8. Are there any products and services, or customers that should be exempted from the requirement to obtain beneficial ownership information due to there being (i) substantially less risk of money laundering or terrorist financing associated with the account; (ii) limited value associated with the

beneficial ownership information in mitigating money laundering/terrorist financing risk; or (iii) an inability to obtain the required information due to other legal requirements?

FinCEN is seeking comment to determine if there are certain types of, or thresholds for, products, services, or customers, with respect to which a financial institution should not be required to obtain beneficial ownership information, due to substantially reduced risk. For example, should customers that are exempt from the CIP Rules, also be exempt from beneficial ownership identification? Additionally, FinCEN is seeking comment as to whether there are certain products or services offered by financial institutions that, due to ancillary statutory or regulatory obligations, would prohibit compliance with a CDD requirement to obtain beneficial ownership information as outlined in this ANPRM. FinCEN is also seeking comment on whether there are significant differences in risks or perceived ability to obtain beneficial ownership information with respect to foreign versus domestic customers and/or beneficial owners.

9. What financial institutions should not be covered by a CDD rule based on products and services offered?

FinCEN is considering whether a CDD program rule as described in this ANPRM should be more widely applicable to financial institutions not currently subject to a CIP Rule, and is seeking comments from industry and interested parties to determine if there are types of financial institutions currently covered under FinCEN's regulations and subject to SAR and AML Program rules, that should not be covered by a CDD obligation, either because the products and services offered are not consistent with the information sought in a CDD obligation or for any other reason.

10. What would be the impact on consumers or other customers of a CDD program including the elements identified above?

FinCEN is seeking comment regarding the potential impact on consumers or customers of financial institutions. What are the benefits and challenges of the above suggested CDD requirements that may exist between financial institutions and customers taking into account the objective of increasing the inclusion in the financial system of traditionally underserved individuals? Will a CDD program affect the willingness or ability of consumers or others to use or access certain financial institutions or services?

VI. Conclusion

With this ANPRM, FinCEN is seeking input on the questions set forth above. FinCEN also is soliciting comments on the impact to law enforcement or authorities, regulatory agencies, and consumers, and welcomes comments on all aspects of the ANPRM, and all interested parties are encouraged to provide their views.

Dated: February 28, 2012.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–5187 Filed 3–2–12; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0118; FRL–9642–9]

Approval and Promulgation of Implementation Plans; Alabama: Removal of State Low-Reid Vapor Pressure Requirement for the Birmingham Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, through parallel processing, a draft revision to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM), on January 10, 2012. The proposed revision modifies Alabama's SIP to move Chapter 335–3–20 ''Control of Fuels,'' which includes the regulation that governs the State's 7.0 pounds per square inch (psi) requirement for the low-Reid Vapor Pressure (RVP) fuel program in Jefferson and Shelby Counties (hereafter referred to as the ''Birmingham Area'') from the active measures portion of the Alabama SIP to the contingency measures portions of the maintenance plans for the Birmingham Area for the ozone national ambient air quality standards (NAAQS or standards), and of the proposed maintenance plans for the 1997 annual fine particulate matter ($PM_{2.5}$) standards, and the 2006 24-hour $PM_{2.5}$ standards, if finalized. If this change to the SIP is finalized, the federal RVP requirement of 7.8 psi will apply for the Birmingham Area. EPA is proposing to approve this SIP revision because the State has demonstrated that it is consistent with section 110 of the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before April 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0118, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0118, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0118. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be

able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. 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 federal holidays.

FOR FURTHER INFORMATION CONTACT:

Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is parallel processing?

Consistent with EPA regulations found at 40 CFR part 51, Appendix V, section 2.3.1, for purposes of expediting review of a SIP submittal, parallel processing allows a state to submit a plan to EPA prior to actual adoption by the state. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the state is holding its public process. The state and EPA then provide for concurrent public comment periods on both the state action and federal action.

If the revision that is finally adopted and submitted by the State is changed in aspects other than those identified in the proposed rulemaking on the parallel process submission, EPA will evaluate those changes and if necessary and appropriate, issue another notice of proposed rulemaking. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On January 10, 2012, the State of Alabama, through ADEM, submitted a request for parallel processing of a draft SIP revision that the State had already taken through public comment. ADEM requested parallel processing so that EPA could begin to take action on its draft SIP revision in advance of the State's submission of the final SIP revision. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) Adopted by Alabama, (2) submitted formally to EPA for incorporation into the SIP; and (3) evaluated by EPA, including any changes made by the State after the January 10, 2012, draft was submitted to EPA.

II. What is the background of the RVP requirement?

The following subsections of this proposed rulemaking summarize both the federal and state RVP requirements in the Birmingham Area. Volatility is the property of a liquid fuel that defines its evaporation characteristics. RVP is an abbreviation for ''Reid vapor pressure,'' a common measure of and generic term for gasoline volatility. Pursuant to the CAA, EPA regulates the vapor pressure of gasoline sold at retail stations during the high ozone season (June 1 to September 15) to reduce evaporative emissions from gasoline that contribute to ground-level ozone and diminish the effects of ozone-related health problems.

A. Background for the Federal Requirement for RVP for the Birmingham Area

Section 211(h) of the CAA requires EPA to set a maximum RVP standard of 9.0 psi during the high ozone season, which is defined as June 1st through September 15th of each year. *See also* 40 CFR 80.27. The CAA provides for more stringent requirements to be established for ozone nonattainment areas. Specifically, CAA section 211(h) states:

> Not later than 6 months after November 15, 1990, the Administrator shall promulgate regulations making it unlawful for any person during the high ozone season (as defined by the Administrator) to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi). Such regulations shall also establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control and economic factors.

In accordance with CAA section 211(h), EPA established a two-phase reduction in high ozone season commercial gasoline volatility. These rules focus on reducing gasoline emissions of volatile organic compounds (VOC). VOC and nitrogen oxides (NO_X) are precursors for ground-level ozone. Phase I was applicable to calendar years 1989 through 1991. Depending on the state and month, gasoline RVP was not to exceed 10.5 psi, 9.5 psi, or 9.0 psi. *See* 54 FR 11868 (March 22, 1989). Phase II was applicable to calendar years 1992 and later. Depending on the state and month, gasoline RVP may not exceed 9.0 psi or 7.8 psi. *See* 55 FR 23658 (June 11, 1990). A current listing of the RVP requirements for states can be found on EPA's Web site at: *http://www.epa.gov/otaq/fuels/gasolinefuels/volatility/standards.htm.*

The Birmingham Area was originally classified as a 1-hour ozone nonattainment area by EPA on March 3, 1978 (43 FR 8962). The Birmingham nonattainment Area at that time was geographically defined as Jefferson County, Alabama. On November 6, 1991, by operation of law under section 181(a) of the CAA, EPA classified the Birmingham nonattainment area as a marginal nonattainment area for the 1-hour ozone and added Shelby County to the nonattainment area (56 FR 56693). The nonattainment classification for the Birmingham marginal ozone area was based on ambient air sampling measurements for ozone made during 1987–1989. As an ozone nonattainment area, the Birmingham Area was subject to the federal RVP requirements of 7.8 psi for both Jefferson and Shelby Counties. Subsequently, in 2001, EPA approved a state fuel program that imposed a 7.0 psi requirement for this area, under section 211(c)(4)(C) of the CAA. The action being proposed today

would move the 7.0 psi requirement from the active portion of the Alabama SIP to the contingency measures portion of the maintenance plans for the ozone, 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS. Throughout this proposed rulemaking, EPA's reference to the maintenance plans for the 1997 $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS is in reference to the proposed maintenance plans as these plans have been proposed for approval by EPA but have not yet been finalized.

B. Background for the State Requirement for RVP in the Birmingham Area

Section 211(c)(4)(C) of the CAA allows states to seek a waiver from EPA to adopt into the federally-approved SIP, a state fuel program that is more stringent than federal requirements. Specifically, CAA section 211(c)(4)(C)(i) states:

> A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 7410 of this title so provides The Administrator may approve such provision in an implementation plan, or promulgate an implementation containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measure that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

As mentioned above, the Birmingham Area was designated as a marginal 1-hour ozone nonattainment area on November 6, 1991. *See* 56 FR 56693. Marginal 1-hour ozone nonattainment areas such as the Birmingham Area were required to attain the 1-hour ozone NAAQS no later than November 15, 1993. However, the Birmingham Area did not attain the 1-hour ozone NAAQS by the required deadline and thus, EPA issued a SIP Call for Alabama to develop and submit a plan on how the Area would comply with the 1-hour ozone NAAQS as expeditiously as practicable. This plan, also known as an attainment demonstration, contained the control strategies and underlying regulations that Alabama would use to come into compliance with the 1-hour ozone NAAQS. On November 1, 2000, ADEM submitted the 1-hour ozone attainment demonstration for the Birmingham Area as a revision to the Alabama SIP. Among other control strategies and regulations, this attainment demonstration included a request for EPA to approve Alabama's regulation to establish requirements for low sulfur and low-RVP requirements for the Birmingham Area pursuant to 211(c)(4)(C)(i).

In a final rulemaking on November 7, 2001 (66 FR 56218), EPA determined that Alabama's November 1, 2000, SIP revision contained the necessary data and analyses to support a finding under section 211(c)(4)(C)(i) that the State's low sulfur and low-RVP requirements were necessary for the Birmingham Area to achieve the 1-hour ozone NAAQS. In summary, Alabama's low sulfur/low-RVP fuel program required that all gasoline sold during the control period (June 1st through September 15th) in the Birmingham Area contain a maximum RVP of 7.0 psi and maximum sulfur levels of 150 parts per million volume-weighted average. Alabama's control on sulfur applied only through the summer of 2003. After that time, federal controls on sulfur in gasoline went into effect. There was no termination date for the low-RVP portion of Alabama's fuel regulation.

The Birmingham Area subsequently attained the 1-hour ozone NAAQS and was redesignated for that NAAQS on March 12, 2004. *See* 69 FR 11798. At that time, ADEM included the 7.0 psi RVP requirement in its maintenance plan. Thereafter, the Birmingham Area was designated as a nonattainment for the more stringent 1997 8-hour ozone NAAQS, effective June 15, 2004 (69 FR 23858). On May 12, 2006 (71 FR 27631), the Birmingham Area was redesignated to attainment for the 1997 8-hour ozone NAAQS.[1] As part of the requirement to be redesignated to attainment, ADEM developed a maintenance plan pursuant to CAA section 175A(a) that demonstrated the Area would maintain the 1997 8-hour ozone NAAQS for at least 10 years after redesignation. In that maintenance demonstration, ADEM, in its emissions projections, adopted a conservative approach to the fuel requirement in the Area by assuming a high ozone season RVP requirement of 9.0 psi as opposed to 7.0 psi.[2] The State demonstrated that the Area could continue to maintain the ozone NAAQS with the 9.0 psi requirement. Nonetheless, the State's RVP requirement of 7.0 psi remains in the active portion of the SIP, and the federal RVP requirement of 7.8 psi also remains applicable through 40 CFR 80.27.

On January 10, 2012, ADEM submitted a draft revision to Alabama's SIP to move Chapter 335–3–20 ''Control of Fuels'' from the active measures portion of the Alabama SIP to the contingency measures portions of the maintenance plans for the applicable ozone and $PM_{2.5}$ NAAQS. ADEM explained that the 7.0 psi requirement would be moved to the maintenance plans as a contingency measure for the ozone NAAQS, the annual 1997 $PM_{2.5}$ standard and the 2006 24-hour $PM_{2.5}$ standards; however, it would be removed from the SIP as an active requirement. The applicable RVP would then be the federal standard of 7.8 psi. Because the state RVP requirement of 7.0 psi is a part of the federally-approved SIP for Alabama, the State must meet the requirements of CAA section 110(l) to move this state-level RVP requirement from the active measures portions of the SIP to the contingency measures portions of the affected maintenance plans. More details on CAA section 110(l) requirements are provided below.

III. What are the Section 110(l) requirements?

EPA's primary consideration for determining the approvability of Alabama's January 10, 2012, draft SIP revision is whether this requested action complies with section 110(l) of the CAA. Section 110(l) of the CAA states:

> Plan Revision—Each revision to an implementation plan submitted by a State under this chapter shall be adapted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter. 42 U.S.C. 7410(l).

Because the RVP requirements currently are a part of the SIP, the revision must meet the requirements of CAA section 110(l). Alabama's January 10, 2012, draft SIP revision is requesting

[1] On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS—also known as the 2008 8-hour ozone NAAQS. Currently, the Agency is reviewing individual area's compliance with the revised 8-hour ozone NAAQS and anticipates completing a designation process in the Spring of 2012. Today's rulemaking is not related to the 2008 8-hour ozone NAAQS, however, EPA notes that 2008–2010 and preliminary 2009–2011 monitoring data suggests that the Birmingham Area is attaining the 2008 8-hour ozone NAAQS.

[2] The Birmingham Area was also designated nonattainment for the 1997 $PM_{2.5}$ and the 2006 $PM_{2.5}$ NAAQS. In association with these redesignation request, EPA proposed to approve maintenance plans which assume a high ozone season RVP requirement of 7.8 psi as opposed to the State requirement of 7.0 psi.

only that the state-level requirement of 7.0 psi be moved from the active measures portions of the Alabama SIP to the contingency measures portions of the maintenance plans for the ozone NAAQS, the annual 1997 $PM_{2.5}$ standards and the 2006 24-hour $PM_{2.5}$ standards. Therefore, as part of Alabama's SIP revision request to change its RVP requirement, Alabama must demonstrate that the revision will not interfere with the attainment or maintenance of any of the NAAQS or any other applicable requirement of the CAA.

Developing what is necessary for a SIP revision to comply with section 110(l) is a case-by-case determination based upon the circumstances of each revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which the EPA has not yet made designations. The specific elements of the SIP revision depend on the circumstances and emissions analyses. The State's request does not involve a modification of the 7.8 psi federal RVP requirement, which is separately applicable by federal regulation (40 CFR 80.27) to both Jefferson and Shelby Counties. Thus, EPA's proposed approval action considers the potential impacts with regard to a difference in RVP requirements for the Birmingham Area between the state-level requirement of 7.0 psi and the federal-level requirement of 7.8 psi. EPA's analysis of Alabama's January 10, 2012, draft SIP revision is provided below.

IV. What is EPA's analysis of Alabama's submittal?

ADEM submitted a draft revision to the Alabama SIP on January 10, 2012, for parallel processing. The purpose of Alabama's January 10, 2012, draft SIP revision is to move the state-level RVP requirement of 7.0 psi from the active measures portions of the SIP to the contingency measures portions of the SIP. The applicable RVP requirement would then be the federal 7.8 psi requirement and the 7.0 psi state-level requirement would be a part of the maintenance plans as contingency measures for the NAAQS discussed above. The State is not seeking a change to the federal RVP requirements of 7.8 psi that are applicable to the Birmingham Area.

Alabama's January 10, 2012, draft SIP revision includes an evaluation of the impact that the removal of the 7.0 psi state-level RVP requirement would have on the applicable NAAQS. For the purposes of this change, EPA is making the preliminary determination that the applicable NAAQS[3] of interest for the noninterference demonstration required by section 110(l) of the CAA are the ozone, particulate matter and nitrogen oxides (NO_2) standards because the RVP requirements results primarily in emissions benefits for VOCs and NO_X. VOCs and NO_X emissions are precursors for ozone and particulate matter, and NO_2 is a component of NO_X. There are no emissions reductions attributable to the emissions of carbon monoxide (CO), lead and sulfur dioxide (SO_2) from RVP requirements. As a result, there is no information indicating the proposed revision would have any impact on those NAAQS. Additionally, the Birmingham Area is currently designated attainment for the CO, lead and SO_2 NAAQS, and is continuing to attain these standards. Therefore, the analysis below focuses on the impact of Alabama's changes to the RVP requirements on the ozone, particulate matter and NO_2 NAAQS.

a. Overall Preliminary Conclusions for Non-Interference Analyses for Alabama's RVP Change

In Alabama's January 10, 2012, draft SIP revision, the State provided a technical demonstration to support the request to move Alabama's 7.0 psi RVP requirement from the active measures portions of the Alabama SIP to the contingency measures portions of the affected maintenance plans. In that technical demonstration, Alabama provided information regarding the emissions trends from the maintenance plans for the ozone and $PM_{2.5}$ NAAQS. To determine these emissions, Alabama took a conservative approach and assumed a high ozone season RVP requirement for the Birmingham Area of 9.0 psi in the ozone maintenance plan and 7.8 psi in the maintenance plans for the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. All of these maintenance plans, which included modeling, indicated future emissions projections under the baseline ''attainment'' level emissions without the emissions reductions associated with the state-level 7.0 psi RVP requirements.

In Alabama's January 10, 2012, draft SIP revision, ADEM also provided an updated analysis utilizing the Motor Vehicle Emissions Simulator (MOVES) modeling to evaluate the potential impacts for the ozone NAAQS that might result exclusively from changing the high ozone season RVP requirements from the state-level requirement of 7.0 psi to the federal requirement of 7.8 psi. Specifically, ADEM compared what the projected emissions in the year 2012 (the year the program is requested to be rescinded), would be, assuming a RVP level of 7.0 psi and 7.8 psi. The comparison revealed a slight increase in emissions of 25 tons for NO_X and 60 tons for VOC (cumulative over the entire season) would result from the change to the federal requirement from June 1st through September 15th. While the modeling showed a slight increase in NO_X and VOC emissions resulting from the use of 7.8 psi RVP as opposed to 7.0 psi, the most appropriate analysis for purposes of evaluating non-interference is whether total area emissions in the future years would remain at or below the level determined to be consistent with maintenance of the NAAQS. To provide this full evaluation, the State compared emissions generated for the year 2011, using a RVP of 7.0 psi to emissions generated for the years 2012 and 2015, using a RVP of 7.8 psi. Table 1 below provides the results of this analysis.

TABLE 1—COMPARATIVE EMISSIONS FOR CHANGE TO RVP

	2011 7.0 psi RVP (tons)	2012 7.8 psi RVP (tons)	2015 7.8 psi RVP (tons)
NO_X	*6511	*5819	*4429
VOC	*2764	*2593	*2081

*Emissions are total from June 1 through September 15.

As Table 1 clearly indicates, NO_X and VOC emissions in the Birmingham Area will continue to decrease, even with the increase in high ozone season fuel RVP to 7.8 psi. The slight increase in emissions is being mitigated area-wide by a steady decrease in tailpipe emissions, which is the result of cleaner new vehicle fleet replacing the older fleet. As discussed below, based on this data, together with air quality data, and maintenance demonstrations and attainment designations for the NAAQS, EPA is making the preliminary determination that the slight increase in NO_X and VOC emissions resulting from this change will not interfere with the Area's ability to attain and maintain the NAAQS, or any other applicable requirement. More details on the individual non-interference analyses for the ozone, $PM_{2.5}$ and NO_2 NAAQS are provided below.

b. Non-Interference Analysis for the Ozone NAAQS

Effective June 15, 2004, the Birmingham Area was designated as nonattainment for the 1997 8-hour

[3] The six NAAQS that EPA establishes health and welfare based standards are CO, lead, NO_2, ozone, particulate matter, and SO_2.

ozone NAAQS. The primary precursors for ozone are VOCs and NO_X emissions. As a previous 1-hour ozone nonattainment area, the Birmingham Area was already subject to the federal RVP requirements for high ozone season gasoline, and as mentioned above, the State opted to implement a state-level RVP requirement for high ozone season gasoline to aid the Area with compliance with the ozone NAAQS. Although originally implemented for the 1-hour ozone NAAQS, these federal and state RVP requirements continued to apply to the Birmingham Area for the 1997 8-hour ozone NAAQS, and are still applicable for the Birmingham Area.

On January 27, 2006, ADEM submitted a redesignation request and maintenance plan for the 1997 8-hour ozone NAAQS. As part of the State's ozone maintenance plan, Alabama took a conservative approach to projecting its emissions inventories for the future projection years of 2009, 2015 and 2017 by assuming a level of 9.0 psi for RVP for high ozone season gasoline in the Birmingham Area. The intent of this conservative approach to developing the future projection year emissions was to demonstrate that the Birmingham Area could maintain the 1997 8-hour ozone standard without relying on the 7.0 psi state-level requirement for RVP in high ozone season gasoline. ADEM used the MOBILE6.2 mobile source emissions model to estimate the emissions. In the years 2015 and 2017, ADEM projected a reduction from the 2002 base year inventory of approximately 45 percent in NO_X emissions (in tons per summer day). The projected reduction of VOC emissions (in tons per summer day) for the years 2015 and 2017 is approximately a 20 percent from the 2002 base year emissions inventory.

There is an overall downward trend in ozone concentration in the Birmingham Area that can be attributed to regional and local programs/controls enacted in the Birmingham Area that have led to significant emissions reductions. On May 12, 2006 (71 FR 27631), EPA approved Alabama's 1997 8-hour ozone maintenance plan for the Birmingham Area and redesignated the Area to attainment for the 1997 8-hour ozone NAAQS. The Birmingham Area is continuing to meet the 1-hour and 1997 8-hour ozone NAAQS,[4] and is meeting the new 2008 8-hour ozone NAAQS, based on the 2008–2010 design value of 75 parts per billion (ppb). The 2008 ozone NAAQS is met when the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years is 75 ppb or less. Based on preliminary monitoring data from 2009–2011, the Birmingham Area is continuing to meet the 2008 8-hour ozone NAAQS. More detail on the 2008 8-hour ozone NAAQS is provided below.

EPA established a more stringent 8-hour ozone NAAQS of 75 ppb on March 12, 2008. The Agency is currently in the process of determining areas' compliance with the 2008 8-hour ozone NAAQS, and has not yet completed the formal designation process. However, on December 9, 2011, EPA announced its preliminary intention regarding designations for nonattainment areas for the 2008 8-hour ozone NAAQS. EPA did not indicate the Birmingham Area as a potential nonattainment area for the 2008 8-hour ozone NAAQS. As stated above, although the Agency has not yet completed the designation process, EPA must still consider compliance with section 110(l) of the CAA. EPA, therefore, evaluated whether or not Alabama's requested change to its RVP requirements would interfere with attainment or maintenance of the 2008 8-hour ozone NAAQS. In doing so, EPA reviewed current monitoring data, which suggest that the Birmingham Area appears to be attaining the 2008 8-hour ozone NAAQS. The current design value for ozone for the Birmingham Area is 2008–2010 is 75ppb, while the preliminary 2009–2011 design value is 75 ppb for this Area. EPA also evaluated the potential increase in the VOC and NO_X precursor emissions, and whether it is reasonable to conclude that the requested change to Alabama's high ozone season RVP requirement (which would have the effect in the Area of reverting to the federal RVP requirement for high ozone season fuel) would cause the Area to be out of compliance with the 2008 8-hour ozone NAAQS.

In light of the current designations, monitoring data and the submitted modeling, including the fact that the VOC and NO_X emissions inventories are projected to continue to significantly decrease,[5] EPA has preliminarily determined that Alabama's change to its RVP requirements for the Birmingham Area will not interfere with attainment or maintenance of the ozone NAAQS.

c. Non-Interference Analysis for the Particulate Matter NAAQS

Effective April 5, 2005, the Birmingham Area was designated as nonattainment for the 1997 $PM_{2.5}$ Annual NAAQS. The primary precursors for $PM_{2.5}$ are NO_X and sulfur oxides. VOC and ammonia can be determined to be precursors to $PM_{2.5}$ formation on a case-by-case basis. For the Birmingham Area, neither the State of Alabama or EPA have made a determination that VOC and ammonia are significant precursors to the formation of $PM_{2.5}$ in the Birmingham Area thus NO_X and sulfur oxides are the precursors of interests in addition to direct $PM_{2.5}$ emissions. In 2005 ADEM and Jefferson County Department of Health contracted with Envair to study the nature and potential causes of $PM_{2.5}$ concentrations in the Birmingham Area. The study investigated the sources of particulate matter pollution in and around the North Birmingham and Wylam monitors. The study gave insight into the sources of particulate matter pollution in and around the North Birmingham and Wylam monitors. According to the findings of the study, sulfate and primary organic matter are the most important contributors to $PM_{2.5}$ in the Birmingham Area. The results of the study indicate that the most effective control strategies to reduce $PM_{2.5}$ concentrations in the Birmingham area include the reduction of regional and urban/local emissions of SO_2. As mentioned earlier in this rulemaking, the RVP requirements result in emissions benefits for VOC and NO_X so EPA focused on these precursors for the analysis of the potential impact of Alabama's SIP change.

On May 13, 2009, ADEM submitted a redesignation request and maintenance plan for the 1997 $PM_{2.5}$ Annual standards. As part of the State's 1997 Annual $PM_{2.5}$ maintenance plan, Alabama took a conservative approach for developing its emissions inventory for the future projection years of 2009, 2015 and 2017 by assuming a level of 7.8 psi for RVP for high ozone season gasoline in the Birmingham Area. The intent of this conservative approach to developing the future projection year emissions was to demonstrate that the Birmingham Area could maintain the 1997 Annual $PM_{2.5}$ standard without relying on the 7.0 psi state-level requirement for RVP in high ozone season gasoline. ADEM originally used the MOBILE6.2 mobile source emissions model to estimate the emissions but later updated these emissions with the MOVES mobile source emissions model. As discussed earlier the most effective

[4] The air quality design value for the 8-hour ozone NAAQS is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration. The level of the 1997 8-hour ozone NAAQS is 0.08 parts per million (ppm). The 1997 8-hour ozone NAAQS is not met when the design value is greater than 0.08 ppm (0.085 ppm rounds up).

[5] Indeed, the future decreases in the inventory are an order of magnitude greater than the increases associated with the change in RVP.

way to reduce $PM_{2.5}$ concentrations in the Birmingham area is to control SO_2 emissions. The projected reduction of SO_2 emissions (in tons per day) for the years 2012, 2015, 2018, 2021 and 2024 is approximately 58 percent from the 2009 base year emissions inventory. As Table 2 indicates the $PM_{2.5}$ annual design value has been decreasing. The overall downward trend in $PM_{2.5}$ concentration in the Birmingham area can be attributed to regional and local programs/controls enacted in the Birmingham area that have led to significant emission reductions.

TABLE 2—$PM_{2.5}$ ANNUAL DESIGN VALUES

Year	2005–2007	2006–2008	2007–2009	2008–2010
Design Value *	18.7	17.3	15.1	13.7

* The air quality design value for the $PM_{2.5}$ 1997 annual standard is 15.0 micrograms per cubic meter (μg/m³).

On June 29, 2011 (76 FR 38023), EPA made a determination that the Birmingham $PM_{2.5}$ nonattainment area has attained the 1997 annual $PM_{2.5}$ standard and on November 10, 2011 (76 FR 70078), EPA proposed to approve Alabama's 1997 Annual $PM_{2.5}$ maintenance plan for the Birmingham Area and redesignate the Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. EPA did not receive any comments on the proposed rulemaking to redesignate this Area to attainment for the 1997 Annual $PM_{2.5}$ standards.

On June 17, 2010, ADEM submitted a redesignation request and maintenance plan for the 2006 24-hour $PM_{2.5}$ standards. As part of the State's 2006 24-hour $PM_{2.5}$ maintenance plan, Alabama took a conservative approach for developing its emissions inventory for the future projection years of 2012, 2015, 2018, 2021 and 2024 by assuming a level of 7.8 psi for RVP for high ozone season gasoline in the Birmingham Area. The intent of this conservative approach to developing the future projection year emissions was to demonstrate that the Birmingham Area could maintain the 2006 24-hour $PM_{2.5}$ standards without relying on the 7.0 psi state-level requirement for RVP in high ozone season gasoline. ADEM used the MOVES mobile source emissions model to estimate the emissions. As Table 3 indicates the $PM_{2.5}$ 24-hour design value has been decreasing. The overall downward trend in $PM_{2.5}$ concentration in the Birmingham Area can be attributed to regional and local programs/controls enacted in the Birmingham Area that have led to significant emission reductions.

TABLE 3—$PM_{2.5}$ 24-HOUR DESIGN VALUES

Year	2005–2007	2006–2008	2007–2009	2008–2010
Design Value	44	39	34	29

On September 20, 2010 (75 FR 57186), EPA made a determination that the Birmingham $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ standard and on November 10, 2011 (76 FR 70091), EPA proposed to approve Alabama's 2006 24-hour $PM_{2.5}$ maintenance plan for the Birmingham Area and redesignate the Area to attainment for the 2006 24-hour $PM_{2.5}$ standards. EPA did not receive any comments on the proposed rulemaking to redesignate this Area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

In light of the proposed designation, monitoring data and the submitted modeling, including the fact that the VOC and NO_X emissions inventories are projected to continue to significantly decrease, EPA has preliminarily determined that Alabama's change to its RVP requirements for the Birmingham Area will not interfere with attainment or maintenance of the 1997 $PM_{2.5}$ annual or the 2006 24-hour $PM_{2.5}$ standards.

d. Non-Interference Analysis for the 2010 NO_2 NAAQS

On January 20, 2012, EPA finalized designations for 2010 NO_2 NAAQS. Alabama was designated unclassifiable/attainment, including the Birmingham Area, for the 2010 NO_2 NAAQS. Also, EPA evaluated the potential increase in the NO_X emissions (approximately a quarter of a ton per day between June 1st and September 15th) and whether it is reasonable to believe that Alabama's change for its high ozone season RVP requirement (which has the effect of reverting the Area to the federal RVP requirement for high ozone season fuel) would cause the Area to be out of compliance with the 2010 NO_2 NAAQS. The slight increase in NO_X emissions is being mitigated by a steady decrease in tailpipe emissions, which is the result of cleaner new vehicle fleet replacing the older fleet. In light of the current designation, monitoring data and the submitted modeling, including the fact that NO_X emissions inventories are projected to continue to significantly decrease, EPA has preliminarily determined that Alabama's change to its RVP requirements for the Birmingham Area will not interfere with the continued decline in NO_X emissions, nor with attainment or maintenance of the 2010 NO_2 NAAQS.

V. Proposed Action

EPA is proposing to approve Alabama's January 10, 2012, SIP revision regarding the State's regulation at Chapter 335–3–20 ''Control of Fuels'' which identifies Alabama's 7.0 psi requirement for the low-RVP fuel program in the Birmingham Area (*i.e.,* Jefferson and Shelby Counties). Specifically, Alabama's January 10, 2012, proposed SIP revision moves the State's 7.0 psi requirement for low-RVP fuel program in the Birmingham Area from the active measures portion to the contingency measures portions of the maintenance plans for ozone standards, the annual 1997 $PM_{2.5}$ standard and the 2006 24-hour $PM_{2.5}$ standard. This action, if finalized, would result in applicability of the federal RVP requirement of 7.8 psi for the Birmingham Area.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: February 24, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–5266 Filed 3–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2011–0174; FRL–9642–2]

Electronic Reporting of Toxics Release Inventory Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Facilities that currently report Toxics Release Inventory (TRI) data to the U.S. Environmental Protection Agency (EPA) use either paper reporting forms or the online reporting software application known as the Toxics Release Inventory-Made Easy Web or simply *TRI-MEweb.* Effective January 1, 2013, EPA proposes to require facilities to report non-confidential TRI data to EPA using electronic software provided by the Agency. The only exception to this electronic reporting requirement would be for the few facilities that submit trade secret TRI information (including sanitized and unsanitized information), who would continue to submit their trade secret reporting forms and substantiation forms in hard copy. As of Reporting Year (RY) 2010, approximately 95 percent of TRI reporting facilities were using *TRI-MEweb,* making it possible for the Agency to process and expedite the release of TRI data to the public.

Under this rulemaking, EPA would also require facilities to submit electronically (i.e., not on paper forms or CD–ROMs) any revisions or withdrawals of previously submitted TRI data. For trade secret submissions, EPA would still accept revisions or withdrawals of previously submitted trade secret information on paper forms.

DATES: Comments must be received on or before May 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2011–0174, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: oei.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–TRI–2011–0174. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information for which disclosure is restricted by statute. Certain other materials, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Public Reading Room is open from

8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For specific information on this rulemaking, contact David Turk, Toxics Release Inventory Program Division, Mailcode 2844T, OEI, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; Telephone: (202) 566–1527; Email: *Turk.David@epa.gov.*

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I. Background and General Information

A. Acronyms and Abbreviations Used in This Document

AFR—Automated Form R
APA—Administrative Procedure Act
ATRS—Automated TRI Reporting Software
CBI—Confidential Business Information
CDX—Central Data Exchange
CFR—Code of Federal Regulations
CROMERR—Cross-Media Electronic Reporting Rule
DPC–TRI Data Processing Center
EO—Executive Order
EPA—U.S. Environmental Protection Agency
EPCRA—Emergency Planning and Community Right-to-Know Act
FR—**Federal Register**
GPEA—Government Paperwork Elimination Act
ICR—Information Collection Request
NAICS—North American Industry Classification System
NTTAA—National Technology Transfer and Advancement Act of 1995
OEI—Office of Environmental Information (EPA)
OMB—Office of Management and Budget (Executive Office of the President)
PPA—Pollution Prevention Act
RY—Reporting Year
SIC—Standard Industrial Code
TRI—Toxics Release Inventory
TRI-ME—TRI-Made Easy Desktop Software
TRI-MEweb—Toxics Release Inventory-Made Easy Internet-based Software Application
U.S.C.—United States Code
XML—Extensible Markup Language

B. Does this action apply to me?

This proposed rule applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in Part 372, Subpart B, of Title 40 of the Code of Federal Regulations. Potentially affected categories and entities may include, but are not limited to the following:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): • 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); • 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); • 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); • 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); • 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); • 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); and • 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

If you have questions regarding the applicability of this action to a particular entity, consult the individual listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. This action may also be of interest to those who use EPA's TRI data and have an interest in the public availability of high-quality, timely TRI data and information, including state agencies, local governments, communities, environmental groups and other non-

governmental organizations, as well as members of the general public.

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What is EPA's statutory authority for taking this action?

The EPA is implementing this action under sections 313(g), 313(h), and 328 of EPCRA, 42 U.S.C. 11023(g), 11023(h) and 11048, and section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106.

Under EPCRA, Congress granted EPA broad rulemaking authority. EPCRA section 328 provides that the ''Administrator may prescribe such regulations as may be necessary to carry out this chapter.'' 42 U.S.C. 11048. EPCRA requires EPA to ''publish a uniform toxic chemical release form for facilities covered'' by the TRI Program. 42 U.S.C. 11023(g).

The Government Paperwork Elimination Act (GPEA) (Pub. L. 105–277 (44 U.S.C. 3504)) allows Federal agencies to provide for electronic submissions and the use of electronic signatures, when practicable. Similarly, EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR Part 3), published in the **Federal Register** issue of October 13, 2005, states that any requirement in Title 40 of the CFR to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions, once the Agency publishes a notice that electronic document submission is available for that requirement.

III. What reporting requirement change is EPA proposing?

A. Description of Proposed Change

EPA is proposing to require facilities to report non-confidential TRI data to EPA electronically. Under this proposal, EPA would no longer accept paper submissions of TRI reports, except for trade secret submissions which would still be submitted on paper forms (including sanitized and unsanitized versions).

Currently, EPA provides an online-reporting application, *TRI-MEweb,* for facilities to use to report TRI data to the Agency. *TRI-MEweb* provides a number of features that allow facilities to prepare and submit their TRI reports to EPA more efficiently. For example, it includes data validation tools that help facilities submit complete and valid data and compare the current year's data to the prior year's data—a feature which can sometimes help facilities identify potential data errors. Comprehensive use of *TRI-MEweb* should help facilities prepare and submit accurate TRI reports and reduce the amount of time it takes EPA to process the reports and make the data available to the public.

Many TRI facilities have recognized the benefits of electronic reporting, as reflected by the general increase in the percentage of facilities that use *TRI-MEweb* to submit TRI data to EPA electronically each year. For reporting year (RY) 2010, approximately 95% of facilities used *TRI-MEweb* to report TRI data.

Because such a large portion of TRI reporters already use *TRI-MEweb,* this proposed TRI electronic reporting requirement is not expected to affect the majority of TRI reporting facilities. In fact, fewer than 5% of current TRI reporting facilities would need to become familiar with the electronic reporting process. Information about using *TRI-MEweb* to report electronically is available on the TRI Web site (*http://www.epa.gov/tri*) and in the most recent version of the Toxic Chemical Release Inventory Reporting Forms and Instructions (RFI), which is available on the TRI Web site.

Under this proposed rule, facilities that submit trade secret information would continue to submit two versions of the substantiation form and two versions of Form R or Form A—sanitized versions that include the generic chemical name that is structurally descriptive of the chemical being claimed as a trade secret and unsanitized versions that include the trade secret chemical name. *TRI-MEweb* does not allow facilities to submit trade secret information; however, to facilitate reporting of such information, EPA currently provides electronically fillable/printable versions of the TRI reporting forms (i.e., Form A, Form R, and Form R Schedule 1) on the TRI Web site. EPA strongly recommends that TRI facilities that submit TRI trade secret information use a computer or typewriter to prepare their hard-copy submissions of TRI information and consult the TRI Web site (*http://www.epa.gov/tri*) for more detailed information.

To codify this proposed rule, EPA proposes inserting a paragraph (c) into 40 CFR 372.85. This codification would require most regulated facilities to submit TRI data electronically using the current electronic reporting tool provided by EPA. EPA would only accept TRI data that are submitted electronically, except for trade secret TRI forms and substantiations; and EPA would not accept or process TRI data that are not submitted in the appropriate manner.

B. How are TRI reports currently submitted to and processed by the agency?

Currently, facilities submit TRI reporting forms electronically or by paper. To submit TRI data by paper, facilities download the appropriate TRI reporting form or forms from the TRI Web site (accessible at *http://www.epa.gov/tri*). Before RY 2006, EPA mailed paper TRI reporting forms to facilities each year. Since RY 2006, EPA has made the TRI reporting forms available on its Web site.

If using a paper TRI reporting form, the facility's form Preparer enters the facility's data on the form, the Certifying

Official certifies/signs the form, and the facility then sends the form to EPA's TRI Data Processing Center (DPC) via mail or courier. The current RFI, available on the TRI Web site (accessible at *http://www.epa.gov/tri*), provides a more detailed explanation of this process.

In January 2011, EPA began providing fillable/printable versions of the TRI Reporting Form R, Form R Schedule 1, and Form A through the TRI Web site. For those facilities still wishing or needing to submit paper forms (e.g., for trade secret submissions), EPA encouraged the use of the fillable/printable forms, rather than handwritten forms, to help ensure that the data—once received by the DPC—could be read and entered into the TRI database.

Electronic reporting using *TRI-MEweb* is already EPA's recommended reporting approach for submitting TRI information to the Agency, and under this proposed rule, it would become the required approach. To submit TRI data electronically, a facility registers with EPA's Central Data Exchange (CDX) and uses *TRI-MEweb* to prepare, certify, and submit TRI reports. The use of CDX and *TRI-MEweb* to prepare and submit TRI reports is explained below, in Unit III.D, ''How Does a Facility Report TRI Data Using *TRI-MEweb*?''

C. What is the history of electronic reporting of TRI data to EPA?

Beginning in 1987, the Agency began encouraging facilities to submit TRI Form R data electronically using magnetic media. Initially, EPA provided year-specific Automated Form R (AFR) software that allowed a facility to submit TRI data for a particular reporting year. Facilities could install and use the AFR software to produce either a hard-copy TRI report or a diskette, which facilities could then submit to EPA. Upon receipt, the DPC would transcribe hard-copy TRI reports into a database and electronically enter diskette submissions into a database. The use of AFR proved to be popular among facilities, and the percentage of TRI reporting facilities using this tool increased from 13 percent in 1990 to 62 percent in 1996.

Generally, the Agency improved upon the AFR each year by incorporating new features, such as the ability to submit TRI data for multiple reporting years (i.e., separate reports for each year), data validation checks, and the ability to load data from prior years into the current reporting year's electronic form. In 1998, EPA renamed the AFR software to Automated TRI Reporting Software (ATRS) to reflect the addition of Form A into the software.

After RY 2000, EPA replaced ATRS with TRI-Made Easy (TRI-ME), which was a computer desktop application that a facility could download from the TRI Web site or receive in the mail upon request. TRI-ME provided electronic assistance to a facility preparing TRI reports and, for the first time, allowed a facility to submit TRI data to EPA's CDX via the Internet. TRI-ME also allowed facilities to print a hard-copy version of the TRI report or produce a digital file that could then be submitted online or copied to a diskette and mailed to the DPC.

In 2006, for RY 2005, EPA began making the *TRI-MEweb* application available to a limited number of facilities. *TRI-MEweb* is a Web-based reporting application that includes validation features to help facilities report accurate information. This application is entirely online, meaning a facility can access the application from any computer that is connected to the Internet. In addition, because the application is online, EPA can instantly perform any needed software updates or corrections without requiring users to download an updated version of software. Most, if not all, computers and Web software should be compatible with *TRI-MEweb.*

EPA continued to refine *TRI-MEweb* each year after its limited released, expanding the number of facilities that could use it and eventually making the application widely available to nearly all facilities for RY 2008. The Agency also, for RY 2008, informed facilities that it would focus on providing *TRI-MEweb,* and would no longer provide the TRI-ME CD–ROM. Accordingly, a steadily increasing percentage of facilities have submitted TRI data to EPA using *TRI-MEweb,* as illustrated in Chart 1. Electronic reporting using *TRI-MEweb* has now become the predominant mechanism that facilities use to submit TRI data to EPA.

CHART 1—BREAKDOWN OF SUBMISSION METHODS USED DURING THE PAST FIVE REPORTING YEARS

Media type	RY 2005 (percent)	RY 2006 (percent)	RY 2007 (percent)	RY 2008 (percent)	RY 2009 (percent)	RY 2010 (percent)
TRI-MEweb Submissions	0.34	3.12	31.69	65.77	92.16	94.60
TRI-ME via CDX Submissions	62.50	70.42	43.34	17.73	0.18	0.01
TRI-ME via Diskette Submissions	28.71	21.22	18.20	9.79	0.16	0.02
Paper Submissions	8.46	5.24	6.78	6.71	7.50	5.37

Due to the longstanding history of electronic reporting of TRI data, the benefits that *TRI-MEweb* provides, and the prevalence and availability of the Internet, EPA published a notice in the **Federal Register** on January 14, 2011, which encouraged facilities to utilize *TRI-MEweb.* The notice also notified facilities of the availability of fillable/printable TRI reporting forms on the TRI Web site and stated that the Agency was considering publishing this proposed rule to require electronic reporting of TRI data.

D. How does a facility report TRI data using TRI-MEweb?

TRI-MEweb is an interactive, user-friendly Web-based application that guides facilities through the TRI reporting process. As currently implemented, one or more representatives from each facility must establish an account with EPA's CDX in order to prepare, transmit, certify, and submit TRI Forms. CDX is EPA's centralized node on the Environmental Information Exchange Network that serves as EPA's main mechanism for receiving and exchanging electronic information. A facility representative may register for a CDX account or gain access to an existing CDX account at *https://cdx.epa.gov/.*

During the CDX registration process, CDX prompts the facility representative to indicate which applications (e.g., *TRI-MEweb)* to link with the account. If the facility representative has previously registered with CDX for other purposes, then he/she can add *TRI-MEweb* to his/her existing CDX account.

When adding *TRI-MEweb* to the CDX account, CDX will ask the facility representative to select a role as a form Preparer or Certifying Official. Either a Preparer or a Certifying Official can enter a facility's TRI data in *TRI-MEweb* and transmit it to CDX to await

certification; but only a Certifying Official can approve and certify a TRI reporting form and submit the final, certified form to EPA using *TRI-MEweb* and CDX. Preparers and Certifying Officials can potentially perform their TRI reporting roles (preparing and/or certifying TRI forms) for multiple facilities, if so designated by the facilities.

EPA's current electronic reporting procedures require each Certifying Official to sign and submit a hard-copy Electronic Signature Agreement (ESA) to EPA before certifying any TRI reports. Once a facility representative registers in CDX as a *TRI-MEweb* Certifying Official, EPA sends an ESA to that representative via email. The ESA includes a TRI Facility Identification number for each facility for which the Certifying Official is responsible. The Certifying Official must sign this ESA in hard-copy and mail it to the DPC. Upon receiving an ESA, the Agency may take five to seven days to approve it. Once the ESA is approved by EPA, the Certifying Official may review, certify, and submit any pending TRI submissions to EPA using *TRI-MEweb* and CDX. More detailed information on these procedures is available on the TRI Web site.

Once registered with CDX and *TRI-MEweb,* a facility's Preparer or Certifying Official can gain access to *TRI-MEweb* through CDX. Once opened, the *TRI-MEweb* application provides interactive Web pages that enable a Preparer or Certifying Official to provide and validate the current year's data. After providing the pertinent data, a Preparer (or Certifying Official) can transmit the data electronically to CDX where it is then available for certification by the facility's Certifying Official(s). The Certifying Official can then log into CDX to review, certify, and submit the TRI report to EPA. Once EPA receives the certified report in CDX, the data are then sent to the TRI database (and if appropriate, also to a state).

Some TRI facilities have their own software or use private software to assist in collecting chemical release data. This ''third-party software'' is often designed to produce output data files that match EPA's electronic data structure specifications. *TRI-MEweb* accepts chemical data files from third-party software using Extensible Markup Language (XML). Detailed information describing the XML schema *TRI-MEweb* uses for the current reporting year is available online at *http://www.exchangenetwork.net/exchanges/cross/tri.htm.*

Detailed instructions on using CDX and *TRI-MEweb,* including tutorials, are available on the TRI Web site and in the RFI, which is also available through the TRI Web site. Facilities may also contact the TRI Information Center, the CDX Helpdesk, the TRI DPC, the Regional TRI Coordinators, or the TRI Program staff at EPA Headquarters for further assistance. Please see the ''Contact Us'' information located on the TRI Web site for further details.

Please note that the use of *TRI-MEweb* to report TRI data to EPA does not necessarily satisfy all reporting requirements that a state or local government might require. However, as will be explained below in Unit III.G, ''What Benefits Will this Proposed Rule Likely Produce?,'' facilities that are located in states or territories (hereinafter collectively referred to as ''states'') that actively participate with the TRI Data Exchange (TDX) can meet dual-reporting requirements by submitting TRI reports using *TRI-MEweb.* In these states, reports submitted via *TRI-MEweb* are electronically made available to the state in which the facility is located, thus satisfying the requirement to report TRI data for both the applicable state and EPA.

For facilities located in states not actively participating in TDX, *TRI-MEweb* can provide these facilities with a certification statement which the Certifying Official can sign and mail to the appropriate state along with a diskette or hard copy of the TRI data the Preparer or Certifying Official entered into *TRI-MEweb.*

E. Why is EPA proposing this requirement?

Electronic reporting not only makes it easier for facilities to prepare and submit their TRI data to EPA, it also helps EPA process and make the data available to the public more quickly than is possible for data submitted on paper forms. When facilities submit paper forms, EPA must manually enter the data into the TRI electronic database, which requires more time and staff resources than required to process electronic submissions. In addition, transcription errors can inadvertently be introduced during this process, particularly if the data have been handwritten on the reporting forms. Electronic reporting makes it possible for EPA to more quickly process the data and provide communities with access to the latest TRI data on toxic chemical releases and other waste management.

Electronic reporting itself prevents transcription errors and expedites TRI data processing; but in addition, *TRI-MEweb,* provides useful features that make it easier and faster for facilities to prepare and submit TRI data to EPA. For example, *TRI-MEweb* provides facility representatives with access to a facility's prior years of reporting data (as applicable), pre-populates selected fields on the TRI forms (i.e., if the facility previously submitted a TRI report), provides standardized parent company information and chemical pick-lists, and automatically calculates the data for some numerical fields on the TRI forms. *TRI-MEweb* also provides data validation features, which help prevent facilities from submitting incomplete or invalid data. Due to the benefits *TRI-MEweb* provides, EPA expects that its use by all facilities will enhance data accuracy and expedite EPA's processing and public release of the TRI data.

This proposal to require electronic TRI reporting supports broader government efforts to further the electronic collection and dissemination of data and information, and it is consistent with the provisions of the Government Paperwork Elimination Act (GPEA). GPEA authorizes federal organizations to use electronic forms, electronic filings, and electronic signatures, when practicable, to conduct official business with the public.

F. How does this Proposed Rule affect revisions and withdrawals of previous TRI submissions?

This proposed rule would require facilities that wish to revise or withdraw previously submitted non-confidential TRI data to do so electronically. As part of this proposed rule, the Agency would continue to allow facilities to revise or withdraw TRI reports going back to RY 2005, but not for reporting years prior to RY2005. Moreover, EPA would only accept revisions and/or withdrawals submitted via *TRI-MEweb. TRI-MEweb* allows a facility to gain access to and revise or withdraw TRI reports in *TRI-MEweb* for prior reporting years, back to RY 2005, even if the facility did not use *TRI-MEweb* for the original submission.

EPA proposes this RY 2005 cut off date for several reasons, including (1) the small number of revisions/withdrawals received for reporting years prior to RY 2005 (a relatively small proportion of TRI form revisions/withdrawals are generally submitted to EPA each year, and most of these revisions/withdrawals relate to TRI reports for the past few years), (2) the resources that would be required to modify *TRI-MEweb* and related information exchange capabilities to accommodate all reporting reporting years, and (3) the staff resources and

time required to continue processing paper form revisions/withdrawals.

As with original TRI submissions, preparing and submitting revisions/withdrawals electronically should facilitate the reporting process for facilities, while also making it possible for EPA to more quickly process and make the updated data available to the public. Information on using *TRI-MEweb* to submit TRI revisions/withdrawals is available on the TRI Web site and in the *TRI-MEweb* application.

In order to focus Agency resources on processing and making the most recent TRI data available to the public and to maintain some consistency in the handling of non-confidential and trade secret data, EPA plans to accept paper submissions of trade secret revisions/withdrawals that concern reporting years back to RY 2005.

G. What benefits will this proposed rule likely produce?

Requiring facilities to report TRI data electronically will help reduce the likelihood of data entry errors occurring at either the facility or EPA, as well as reduce the amount of time it takes EPA to process the data, when compared to paper-based submissions. By requiring electronic reporting, the Agency will be able to more effectively provide the public with timely access to the latest TRI data on toxic chemical releases and other waste management within communities.

Another benefit electronic reporting provides is that TRI data submitted via CDX is sent digitally to those states that participate in the TRI Data Exchange (TDX). Since 2005, EPA has entered into separate Memoranda of Agreements (MOA) with states that have elected to participate in TDX. More information on TDX is available through the TRI Web site.

A facility located in a state that participates in TDX can satisfy its requirement to report TRI data to both EPA and to the applicable state by electronically submitting certified TRI data to EPA. These TRI data are then automatically made available to the state within which the facility is located.

Under the proposed rule, facilities would be required to submit their TRI data to EPA electronically; and therefore, those facilities located in TDX-participating states would be able to satisfy the requirement to submit federally-required TRI data to both the EPA and the state with one electronic submission. Currently, if a facility submits a paper report to EPA, even if it is located in a TDX-participating state, the facility must also submit its TRI report directly to the state to meet its legal reporting obligations. Requiring the use of electronic reporting would make the state processing of TRI data easier for TDX-participating states because they would no longer need to process paper reporting forms for TRI data. Facilities that are located in states that do not participate in TDX would prepare and submit their TRI data to EPA using *TRI-MEweb,* and they could then use *TRI-MEweb* to produce a certification statement, along with a hard-copy TRI report or CD, which could be signed by the Certifying Official and mailed to the appropriate state.

H. Would EPA offer any exceptions to the proposed requirements?

The Agency expects facilities that submit TRI data to EPA to do so electronically. Only trade secret TRI reports (including both sanitized and unsanitized information) would still be submitted to EPA on paper forms. EPA believes that the overall benefits of submitting TRI data electronically exceed those associated with maintaining a paper-based reporting approach. EPA recognizes that there could potentially be unexpected initial set-up costs or technical challenges associated with a requirement to submit TRI reports electronically, particularly for facilities that have never used electronic reporting; however, the Agency believes that the benefits of electronic reporting of TRI data—considering the ease of reporting, enhanced data quality, and faster public access to the data—would ultimately outweigh other considerations.

EPA also offers forms of assistance to TRI reporters looking for help with electronic reporting. The Agency provides guidance on the TRI Program Web site, maintains a TRI help desk, and offers webinars and other training programs. Further, EPA believes nearly all facilities can already access the Internet because the Agency stopped providing physical copies of the TRI reporting forms in 2006, exclusively thereafter offering the forms online and only mailing a physical copy upon request.

I. What is EPA doing to help ensure facilities know about this proposed rule?

To inform facilities about this rulemaking and to solicit feedback prior to publication of the proposed rule, EPA sent a letter via email or postal carrier if an email address was not available to technical contacts for facilities that submitted TRI data for RY 2009 and RY 2008. This letter notified these facilities that EPA was considering a proposed rule to require the electronic reporting of TRI data and informed the facilities of an online discussion forum where any interested stakeholder could comment on EPA's plan to require electronic reporting of TRI data. EPA recognizes the discussion forum was provided electronically, which could bias the discussion toward facilities with access to computers, so EPA explained in the letter that facilities could physically mail comments to the Agency so that the Agency could make these comments available on the discussion forum.

The discussion forum went live on June 19, 2011, was accessible via the TRI homepage, and stayed open through July 1, 2011, receiving 57 comments. Both the discussion forum and the comments received are publically available for viewing in the docket for this rulemaking (EPA–HQ–TRI–2011–0174). The comments received via the forum fall into several broad categories: support for the proposed action; concerns involving the online reporting tools, and concerns regarding requiring electronic reporting.

Comments supporting this action: Many of the comments received support requiring electronic reporting of TRI data, noting electronic reporting expedites the reporting process and improves data quality, which, in turn, allows EPA to provide timely, accurate data to TRI data users. Adding to this perspective were comments suggesting nearly all TRI reporters likely have access to a computer and the Internet. Additionally, some of the comments requested EPA to require states to accept electronic submissions by mandating participation in the TRI Data Exchange.

Concerns involving the currently available reporting tools: EPA received some comments, both supportive and critical of this rulemaking, stating CDX and *TRI-MEweb* could be more intuitive. In particular, many of these comments requested a simplification to the process used to register a Certifying Official. Many comments also expressed concern that the current process for registering a Certifying Official, which typically takes about a week, can become a major impediment to reporting before the yearly July 1 deadline should managers become unavailable or should the facility change its management in June.

EPA recognizes there are situations where a facility could face last-minute difficulties due to the current Certifying Official registration process. However, facilities may submit TRI reports prior to the deadline. In fact, *TRI-MEweb* for the reporting period is typically made available in January, thereby providing facilities up to six months to report TRI

data prior to the yearly July 1 deadline. Any facility that foresees an upcoming change to its Certifying Official should be able to report prior to the change. Moreover, the Agency encourages facilities to designate an Alternate Certifying Official should the Certifying Official become unavailable close to the reporting deadline. In most situations either the Certifying Official or Alternate Certifying Official should be available prior to the reporting deadline.

It is important to note that the current process used to register Certifying Officials is evolving. EPA wants to make reporting as simple as possible, and, thus, is considering ways to simplify and expedite the process. It is quite possible that a new process will become available in the next year or two that will enable the near-instantaneous registration of a Certifying Official.

Comments also voiced concerns with various aspects of *TRI–MEweb.* EPA improves *TRI–MEweb* each year and plans to address some of the issues raised by comments. For example, changes anticipated for future releases of *TRI–MEweb* include supporting more Web browsers, clarifying the submittal process, and incorporating additional features into *TRI–MEweb* to further expedite the reporting process. EPA plans to continue addressing issues and improving *TRI–MEweb* for successive reporting years.

Concerns regarding requiring electronic reporting: A few comments suggested the electronic reporting requirement should not extend to all facilities, suggesting not all facilities have access to a computer and the Internet. While EPA recognizes this possibility, EPA, as explained above, does not foresee that facilities meeting TRI Reporting thresholds will have difficulty accessing a computer and the Internet. Further, due to the high percentage of facilities that already use *TRI–MEweb* and the longstanding practice of providing the reporting forms exclusively online, most facilities already appear to have access to a computer and the Internet.

Some of the comments requested EPA provide various exceptions should a facility be unable to report using *TRI-MEweb* prior to the yearly July 1 deadline. The Agency does not foresee the need for such regulatory exceptions. EPCRA provides a yearly deadline of July 1, and *TRI-MEweb* is typically available in January, which allows facilities nearly six months to report the required TRI data. If facilities encounter unexpected difficulties with electronic reporting, they may use any one of the several help services EPA provides to assist facilities in reporting TRI data.

Several comments expressed a preference for paper reporting, stating it is easier to report by paper, especially for facilities that only submit one TRI reporting form to EPA. EPA understands in some cases a facility might prefer a paper reporting option but EPA believes, on the whole, electronic reporting will benefit facilities, TRI data users, and the Agency for all of the reasons noted in this proposed rule. Moreover, electronic reporting enables the Agency to publish data sooner, minimizes paper waste, and reduces costs to the Agency. At this point, EPA does not foresee a need to allow facilities to submit paper reports of non-confidential TRI data.

IV. Request for Comment

In connection with this proposed rule, EPA encourages all interested persons to submit comments on the following topics or other relevant topics:

1. EPA specifically seeks comment on whether facilities foresee any significant challenges in submitting RY 2012 TRI reports electronically, and if so, how EPA could potentially facilitate the process (e.g., through Webinars, Regional hands-on assistance, etc.).

2. *TRI-MEweb* currently does not allow a facility to revise or withdraw TRI reporting forms submitted for reporting years prior to RY 2005. The Agency proposes to begin requiring electronic reporting for reporting year 2012, which means facilities would be able to modify data submitted for the prior seven reporting years (RY 2011 through RY 2005), but not for reporting years 2004 through 1988. Historically, only a small proportion of revision and withdrawal submissions received each year pertain to reporting years beyond a seven-year period. EPA seeks comment on whether limiting revisions to data submitted for reporting years 2005 through the present would impose any hardship or concerns.

3. EPA does not foresee a need for an exception to an electronic-reporting requirement. However, the Agency is interested in receiving input on what exceptions, if any, might be appropriate in light of an electronic reporting requirement.

Input on these or other topics directly relevant to this proposed rule will assist the Agency in developing a final rule that addresses information needs, while minimizing the potential reporting burden associated with the rule. EPA requests that those who submit comments provide specific recommendations and include supporting documentation, as appropriate.

V. References

The following is a listing of the documents referenced in this preamble that have been placed in the public docket for this proposed rule under docket ID number EPA–HQ–TRI–2011–0174, which is available for inspection as specified under **ADDRESSES**. For assistance in locating any of these documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Office of Environmental Information. Economic Analysis of the Electronic Reporting Proposed Rule: Community Right-to-Know; Toxic Chemical Release Reporting. July 7, 2011.
2. EPA. Request Facilities To Report Toxics Release Inventory Information Electronically or Complete Fill-and-Print Reporting Forms. **Federal Register** (76 FR 2677, January 14, 2011) (FRL–9251–2). Available on-line at: *http://www.regulations.gov.*

VI. What are the statutory and executive order reviews associated with this action?

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose any new information collection burden. Instead, this proposed action would merely change the manner in which the Agency receives information.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR Part 372 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned the following OMB control numbers 2025–0009 (EPA Information Collection Request (ICR) No. 1363.21) and 2050–0078 (EPA ICR No. 1428.08). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act 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.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA conducted an economic analysis to consider the possible effects of this rulemaking on small entities. This analysis, ''Economic Analysis of the Electronic Reporting Proposed Rule: Community Right-to-Know; Toxic Chemical Release Reporting'' (Ref. #1), demonstrates this proposed rule should not create an economic burden on an individual small business of more than 1% of its sales (or equivalent metric) and, thus, will not have a significant adverse impact on small businesses. After conducting this initial analysis, however, EPA established a new methodology in order to increase transparency and consistency in assessments of burden associated with TRI reporting. (This new economic analysis methodology was recently cleared by OMB as part of OMB's approval of the Information Collection Request (ICR) (a Paperwork Reduction Act (PRA) requirement) which EPA relies upon for collecting information under TRI). EPA has determined that the amount of burden estimated for small entities in the economic analysis is not affected by the previously noted change in burden assessment methodology. As a result, and regardless of whether the previous or current methodology is used, EPA is able to demonstrate that this proposal would not have a significant impact on small businesses.

In summary, this proposed rule would create a one-time burden and a minor subsequent burden for facilities that have not previously used *TRI-MEweb* to submit TRI data to EPA. This burden would relate to obtaining access to a computer and the Internet, designating a facility form Preparer and Certifying Official, establishing an account in CDX, and associating the CDX account with *TRI-MEweb*. The economic analysis EPA prepared for this proposed rule which describes this burden in detail is available under docket ID number EPA–HQ–TRI–2011–0174 as Reference #1.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule will merely require facilities under the TRI Program to submit electronic reports using *TRI–MEweb.* Most facilities already adhere to this requirement, thus this rule will affect a relatively small number of facilities. Further, the cost to adhere to this rule is small and, in aggregate, will not cost more than $100 million or more for state, local, and tribal governments, or the private sectors in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This 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. Any small government that reports to the TRI Program will not incur significant costs because the cost, if any, to report electronically, as described above, is minimal.

E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action would require facilities that submit annual reports under section 313 of EPCRA to do so electronically, which 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. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Under E.O. 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. Instead, the rule merely affects how facilities report information to the TRI Program. Thus, E.O. 13175 does not apply to this proposed rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

E.O. 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Instead, this rule would merely address the manner in which regulated facilities submit reporting information.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements.

Dated: February 23, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 372—[AMENDED]

1. The authority citation for Part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. Section 372.85 is amended by adding paragraph (c) to read as follows:

§ 372.85 Toxic chemical release reporting form and instructions.

* * * * *

(c) *Filing Requirements.* Effective January 1, 2013, facilities that report non-confidential TRI data, including revisions and withdrawals of TRI data, to EPA must prepare, certify, and submit their data to EPA electronically, using the most current version of the TRI online-reporting software provided by EPA.

(1) EPA will no longer accept non-confidential TRI reports, revisions, or withdrawals on paper reporting forms, magnetic media, or CD–ROMs. Information and instructions regarding online reporting are available on the TRI Web site. The only exception to this TRI electronic reporting requirement relates to trade secret TRI submissions (including sanitized and unsanitized reporting forms), which must be submitted to EPA on paper.

(2) Facilities must submit electronically any revisions or withdrawals of previously submitted TRI data. Facilities may only revise or withdraw TRI data previously submitted for reporting years 2005 through the present reporting year.

[FR Doc. 2012–5264 Filed 3–2–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

48 CFR Chapter 10

RIN 1505–AC41

Department of the Treasury Acquisition Regulation; Internet Payment Platform; Correction

AGENCY: Office of the Procurement Executive, Treasury.

ACTION: Proposed rule; correction.

SUMMARY: This document contains corrections to a notice of proposed rulemaking, which was published in the **Federal Register** on Thursday, February 23, 2012 (77 FR 10714), relating to the Internet Payment Platform.

DATES: *Comment due date:* April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Ronald Backes, Director, Acquisition Management, Office of the Procurement Executive, at (202) 622–5930 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2012, the Department of the Treasury published a notice of proposed rulemaking that would amend the Department of the Treasury Acquisition Regulations to implement the Internet Payment Platform. As published, the notice of proposed rulemaking contains an error, which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking, FR Doc. 2012–4216, published February 23, 2012 at 77 FR 10714, is corrected as follows:

§ 1032.7003 [Corrected]

1. On page 10716, in the third column, in § 1032.7003, the date ''October 1, 2011'' is corrected to ''October 1, 2012''.

Dated: February 24, 2012.

Ronald W. Backes,

Director, Acquisition Management, Office of the Procurement Executive.

[FR Doc. 2012–5242 Filed 3–2–12; 8:45 am]

BILLING CODE 4810–25–P

Notices

Federal Register

Vol. 77, No. 43

Monday, March 5, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. Nos. AMS–DA–11–0061; DA–11–06]

Notice of Request for Approval of a New Information Collection for Export/ Health Certificate Forms

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for export certificate request forms for dairy products. There are currently 17 different export certificate request forms for dairy products with more expected as negotiations continue with more countries.

DATES: Comments on this notice must be received by May 4, 2012 to be assured of consideration.

ADDRESSES: Comments may be sent to Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968–S, 1400 Independence Avenue SW., Washington, DC 20090–6465 or may be submitted at the Federal eRulemaking Portal: *http// www.regulations.gov.* Comments should reference the docket number and the date and page of issue in the **Federal Register**. All comments received will be available for public inspection during regular business hours at the above address or at *www.regulations.gov.* The identity of the individuals or entities submitting comments will be made public.

Additional Information: Contact Kenneth Vorgert, USDA/AMS/Dairy Programs, Dairy Grading Branch, 2150 Western Court, Suite 100, Lisle, IL 60532–1973; Tel: 630–437–5037, Fax: 630–437–5037 or via email at: *ken.vorgert@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Health Certificate Request Forms.

OMB Numbers: 0581–NEW.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: The dairy grading program is a voluntary user fee program authorized under the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621–1627). The regulations governing inspection and grading services of manufactured or processed dairy products are contained in 7 CFR part 58. International markets are increasing for United States dairy products. Importing countries are requiring certification as to production methods and sources of raw ingredients for dairy products. USDA, AMS, Dairy Grading Branch is the designated agency for issuing sanitary certificates for dairy products in the United States. Exporters must request export certificates from USDA, AMS, Dairy Grading Branch if the importing country requires them.

Need and Use of the Information: In order for AMS to provide the required information on the export sanitary certificates it must collect the information from the exporter. The information required on the sanitary certificates varies from country to country requiring specific forms for each country to collect the information. Such information includes: identity of the importer and exporter; consignment specifics and border entry point at the country of destination. There are currently 16 different export certificate request forms with ongoing negotiations with at least 5 more countries on possible new sanitary certificates. The information gathered using these forms is only used to create the export sanitary certificate.

Estimate of Burden: Public reporting for this information collection is estimated to average 0.16 hour per request.

Respondents: Businesses or other for-profit.

Estimated Number of respondents: 250.

Estimated Total Annual Responses: 15,000.

Estimated Average number of responses per respondent: 60.

Estimated Total Annual Burden on Respondents: 2,400 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate on the burden of the proposed collection of information including the validity of the methodology and the assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 28, 2012.

Robert C. Keeney,

Acting Administrator.

[FR Doc. 2012–5194 Filed 3–2–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0009]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a meeting of the full Committee by an audio conference call that is open to the public on March 28, 2012. The Committee will discuss: Food Safety Questions from the United States Department of Agriculture (USDA) Agricultural Marketing Service to Support Ground Beef Purchase for the Federal Food and Nutrition Assistance Programs. Specifically NACMCF will address food safety questions to assist the 2012–2013 ground beef purchase for the School Lunch Program on microbiological criteria, pathogen

testing methodology, and sampling plans.

DATES: The full Committee will hold a meeting by phone conference on Wednesday March 28, 2012, from 2 p.m. to 5 p.m. E.S.T.

ADDRESSES: The March 28, 2012, meeting will be held by phone. Please contact Karen Thomas-Sharp at the address below to register for the meeting:

USDA, FSIS, Office of Public Health Science, Stop 3777, Patriots Plaza 3, Floor 9–47, 1400 Independence Avenue SW., Washington, DC 20250, or by phone (202) 690–6620, fax (202) 690–6334, or email: *Karen.thomas-sharp@fsis.usda.gov.*

All documents related to the full Committee meeting will be available for public inspection in the FSIS Docket Room, USDA, at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250 between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available. The NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/Regulations_&_Policies/Federal_Register_Notices/index.asp.*

FSIS will finalize the agenda on or before the meeting and post it on the FSIS Web page at *http://www.fsis.usda.gov/News/Meetings_&_Events/.* Please note that the meeting agenda is subject to change due to the time required for Committee discussions; thus, sessions could end earlier or later than anticipated. Please plan accordingly if you would like to attend or participate in a public comment period.

The official meeting minutes of the March 28, 2012, full Committee meeting, when it becomes available, will be kept in the FSIS Docket Room at the above address and will also be posted on *http://www.fsis.usda.gov/About/NACMCF_Meetings/.*

FOR FURTHER INFORMATION CONTACT: Persons interested in registering to attend the meeting, making a presentation, submitting technical papers, or providing comments at the March 28, plenary session should contact Karen Thomas-Sharp, phone (202) 690–6620, fax (202) 690–6334, email: *Karen.thomas-sharp@fsis.usda.gov* or at the mailing address above. Persons requiring special accommodations for this phone conference (voice and TTY) should notify Ms. Thomas-Sharp by March 1, 2012.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The charter for the NACMCF is available on the FSIS Web page at *http://www.fsis.usda.gov/About/NACMCF_Charter/.*

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria, as well as the review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides scientific advice and recommendations to the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Departments of Commerce and Defense.

Dr. Elisabeth A. Hagen, Under Secretary for Food Safety, USDA, is the Committee Chair; Mr. Michael Landa, Acting Director of the Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chair; and Ms. Gerri Ransom, FSIS, is the Executive Secretary.

Documents Reviewed by NACMCF

FSIS will make all materials reviewed and considered by NACMCF regarding its deliberations available to the public. Generally, these materials will be made available as soon as possible after the full Committee meeting. Further, FSIS intends to make these materials available in electronic format on the FSIS Web page (*www.fsis.usda.gov*), as well as in hard copy format in the FSIS Docket Room. Often, an attempt is made to make the materials available at the start of the full Committee meeting when sufficient time is allowed in advance to do so.

Disclaimer: NACMCF documents and comments posted on the FSIS Web site are electronic conversions from a variety of source formats. In some cases, document conversion may result in character translation or formatting errors. The original document is the official, legal copy.

In order to meet the electronic and information technology accessibility standards in Section 508 of the Rehabilitation Act, NACMCF may add alternate text descriptors for non-text elements (graphs, charts, tables, multimedia, etc.). These modifications only affect the Internet copies of the documents.

Copyrighted documents will not be posted on the FSIS Web site, but will be available for inspection in the FSIS Docket Room.

Additional Public Notification

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

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

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status (Not all prohibited bases apply to all programs).

Persons with disabilities who require alternative means for communication of program information (Braille, large print, and audiotape) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA

is an equal opportunity provider and employer.

Done at Washington, DC, on February 28, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–5272 Filed 3–2–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Salmon-Challis National Forest, Butte, Custer and Lemhi Counties, ID, Supplemental Environmental Impact Statement to the 2009 Salmon-Challis National Forest Travel Planning and OHV Route Designation Project Final EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Salmon-Challis National Forest announces its intent to prepare a supplemental environmental impact statement (SEIS) and revised record of decision (ROD) to the 2009 Salmon-Challis National Forest Travel Planning and OHV Route Designation Project FEIS and ROD as ordered by the District Court of Idaho in a February 4, 2011, memorandum decision and order. The order was filed in response to a January 22, 2010, complaint from The Wilderness Society and the Idaho Conservation League challenging the 2009 decision. Supplemental analysis to correct deficiencies identified by the Court could change the designation of some routes and areas currently open for motor vehicle use and/or change the types of motor vehicle uses and/or seasonal open periods allowed on roads, trails and areas authorized under the 2009 Travel Plan. Any motor vehicle route designation changes resulting from new or supplemental analysis would be dcoumented in a revised record of decision in addition to Court ordered instructions to clarify that a minimum road system determination has not been made (as stated in the original ROD).

DATES: Scoping will not be conducted in accordance with 40 CFR 1502.9(c)(4). The draft supplemental environmental impact statement is expected in early September 2012 and the final supplemental environmental impact statement is expected in late December 2012. There will be a 45-day comment period after the draft supplemental environmental impact statement is issued.

ADDRESSES: Send written comments to Frank Guzman, Forest Supervisor, 1206 South Challis Street, Salmon, Idaho 83467. Comments may also be sent via email to *comments-intermtn-salmon-challis@fs.fed.us* or by facsimile to 208–756–5151.

FOR FURTHER INFORMATION CONTACT: Karen Gallogly, Interdisciplinary Team Leader, at *kgallogly@fs.fed.us* or (208) 756–5103.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the Salmon-Challis National Forest Travel Planning and OHV Designation Project Supplemental EIS is to clarify and revise sections of the analysis conducted for the original 2009 FEIS to correct deficiencies identified by the District Court of Idaho in their February 4, 2011, memorandum decision and order and determine if changes to motor vehicle route designations made in the 2009 ROD are warranted based on supplemental analysis.

To correct the deficiencies, there is a need to (1) analyze the cumulative impacts of multiple short motor vehicle routes on wilderness values and roadless characteristics in Recommended Wilderness Areas (RWAs) and Idaho Roadless Areas (IRAs) to comply with the National Environmental Policy Act (NEPA). The cumulative effects of multiple routes less than one-half mile in length in RWAs and IRAs were not analyzed in the 2009 FEIS because it was thought the ''intrusions into roadless areas were minimally intrusive and not likely to affect wilderness values''. The Court rejected this rationale; (2) demonstrate how the Forest Service applied criteria for the designation of roads, trails and areas with the objective of minimizing damage to soil, watershed, vegetation, and other forest resources; harassment of wildlife and significant disruptions of wildlife habitats; conflicts between motor vehicle uses and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands in compliance with section 212.55 of the Travel Management Rule (36 CFR 212.55); (3) respond to Plaintiff's site-specific comments raised during the legal comment period for the Draft EIS to comply with the NEPA, and (4) include specific language in the revised ROD to clarify a minimum road system determination was not made in the 2009 Travel Plan decision.

Proposed Action

(1.) Analyze the cumulative effects of multiple routes less than one-half mile in length in RWAs and IRAs to wilderness values and roadless characteristics and determine if motor vehicle route designation changes to the 2009 Travel Plan are warranted based on supplemental analysis. 103 routes less than one-half mile in length, totaling 14.91 miles within 24 IRAs and RWAS were identified in the 2009 FEIS; however the cumulative impacts of these routes were not considered. Errors regarding the number and length of all routes in RWAs and IRAs have been identified since 2009. An analysis of effects of all routes in RWAs and IRAs would be conducted and disclosed in the SEIS. Thirty-seven routes totaling 6.68 miles within RWAs and IRAs were inadvertently overlooked and associated effects were not analyzed or disclosed in the 2009 FEIS. Of these 37 routes, 29 are less than one-half mile in length totaling 3.21 miles. These will be included in the supplemental analysis of cumulative effects of routes less than one-half mile in length. Thirteen routes totaling 2.80 miles were designated for use in the 2009 ROD; however these routes did not meet safety specifications or were causing resource damage and were not delineated on the Motor Vehicle Use Map. (2.) Explain how the Forest Service applied the minimization criteria to 2009 motor vehicle route designations to comply with the Travel Management Rule (36 CFR 212.55) and determine if motor vehicle route designation changes are warranted. (3.) Respond to Plaintiffs site specific comments for 113 routes provided during the legal comment period for the DEIS and determine if route designation changes are warranted. Plaintiff's provided monitoring information, photographs and descriptive comments for 113 routes proposed for designated motor vehicle use. Reconsideration of these comments, evaluation of road and trail maintenance, and application of the minimization criteria could change route designations in the revised ROD. (4.) Prepare a Revised ROD documenting any motor vehicle route designations made as a result of supplemental analysis and include language that a minimum road system determination was not made in the 2009 decision.

The supplemental information presented in the SEIS will replace the corresponding information in the August 2009 Salmon-Challis National Forest Travel Planning and OHV Designation Project FEIS. For example, the revised analysis of effects for routes in Idaho Roadless Areas and Recommended Wilderness Areas will replace the roadless and recommended wilderness environmental effects section of the FEIS. Similarly, the public comments and agency responses section of the SEIS will replace the public comments and agency responses section of the FEIS. Other areas of the analysis that are not identified for supplementation within the SEIS will remain unaltered from its presentation in the FEIS. In this manner the SEIS and FEIS will be companion documents.

Responsible Official

The Salmon-Challis National Forest Supervisor, Frank Guzman, is the responsible official.

Nature of Decision To Be Made

The decisions to be made in the revised ROD are similar to the decisions made in the original August 2009 ROD, although the scope of the analysis is narrower and fewer decisions will be made. Given the Purpose and Need, the Forest Supervisor will determine if analysis disclosed in the SEIS to comply with the Court Order will

(1.) Change the designation of some routes and areas open for motor vehicle use under the 2009 Travel Plan, and

(2.) Change the types of use and/or seasonal open period on these roads, trails and areas.

Dated: February 27, 2012.

Frank V. Guzman,

Forest Supervisor.

[FR Doc. 2012–5219 Filed 3–2–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on April 19, 2012. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App 2. The meeting agenda will focus on existing Environmental Education programs and improving engagement with regional school groups. The meeting is open to the public. Written comments are invited and should be sent to William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, KY 42211 and must be received by April 12, 2012 in order for copies to be provided to the members for this meeting. Board members will review written comments received, and at their request, oral clarification may be requested for a future meeting.

DATES: The meeting will be held Thursday, April 19, 2012 from 9 a.m. to approximately 4 p.m. CST.

ADDRESSES: The meeting will be held at Land Between The Lakes at the Energy Lake Campground, 5501 Energy Lake Drive, Golden Pond, KY 42211.

FOR FURTHER INFORMATION CONTACT: Linda L. Taylor, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, KY 42211, 270–924–2002. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. This service is available 7 days a week, 24 hours a day.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Board discussion is limited to Forest Service staff and Board members.

Dated: February 22, 2012.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. 2012–5292 Filed 3–2–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Jamestown, ND; Lincoln, NE; Memphis, TN; and Sioux City, IA Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of Grain Inspection, Inc. (Jamestown); Lincoln Inspection Service, Inc. (Lincoln); Midsouth Grain Inspection Service (Midsouth); and Sioux City Grain Inspection and Weighing Service, Inc. (Sioux City) to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective Date:* April 1, 2012.

ADDRESSES: Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the September 20, 2011 **Federal Register** (76 FR 58241), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Jamestown, Lincoln, Midsouth, and Sioux City. Applications were due by October 20, 2011.

In the Lincoln, NE; Memphis, TN; and Sioux City, IA areas, Lincoln, Midsouth, and Sioux City, respectively were the sole applicants for designation to provide official services.

In the Jamestown, ND area, Jamestown applied for the entire geographic area and North Dakota Grain Inspection Service, Inc. (North Dakota) applied for a portion of the geographic area. GIPSA received three favorable service comments from customers requesting that North Dakota be designated for the geographic area they applied for since they currently receive service by North Dakota through the exceptions program. GIPSA reviewed designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) to determine the best qualified applicant to provide service. Criteria include past performance, the stability and quality of service, cooperation with GIPSA, adequacy of resources, the cost of inspection service, the comments received, the accuracy and detail of their plans, past practices, and financial impact. After a comprehensive review of the designation criteria, GIPSA determined that Jamestown is the best qualified applicant for the Jamestown, ND area.

GIPSA evaluated all available information regarding the designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) and determined that the applicants Jamestown, Lincoln, Midsouth, and Sioux City are qualified to provide official services in the geographic area specified in the **Federal Register** on September 20, 2011. This designation action to provide official services in these specified areas is effective April 1, 2012 and terminates on March 31, 2015.

Interested persons may obtain official services by contacting this agency at the following telephone numbers:

Official agency	Headquarters location	Telephone	Designation start	Designation end
Jamestown	Jamestown, ND	(701) 252–1290	4/1/2012	3/31/2015
Lincoln	Lincoln, NE	(402) 435–4386	4/1/2012	3/31/2015
Midsouth	Memphis, TN	(901) 942–3216	4/1/2012	3/31/2015
Sioux City	Sioux City, IA	(712) 255–8073	4/1/2012	3/31/2015

Section 79(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)).

Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than three years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Authority: 7 U.S.C. 71–87k.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–5250 Filed 3–2–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Pocatello, ID; Evansville, IN; and Salt Lake City, UT Areas; Request for Comments on the Official Agencies Servicing These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on September 30, 2012. We are asking persons or governmental agencies interested in providing official services in the areas presently served by these agencies to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agencies: Idaho Grain Inspection Service (Idaho); Ohio Valley Grain Inspection, Inc. (Ohio Valley); and Utah Department of Agriculture and Food (Utah).

DATES: Applications and comments must be received by April 4, 2012.

ADDRESSES: Submit applications and comments concerning this notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISOnline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISOnline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.
- *Fax:* Eric J. Jabs, 816–872–1258.
- *Email: Eric.J.Jabs@usda.gov.*

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)). Under section 79(g) of the USGSA, designations of official agencies are effective for three years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Areas Open for Designation

Idaho

Pursuant to Section 79(f)(2) of the USGSA, the following geographic area, in the State of Idaho, is assigned to this official agency.

The southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

Ohio Valley

Pursuant to Section 79(f)(2) of the USGSA, the following geographic area, in the States of Indiana, Kentucky, and Tennessee, is assigned to this official agency.

- *In Indiana:* Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties.
- *In Kentucky:* Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties.
- *In Tennessee:* Cheatham, Davidson, and Robertson Counties.

Utah

Pursuant to Section 79(f)(2) of the USGSA, the following geographic area, the entire State of Utah, is assigned to this official agency.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196(d). Designation in the specified geographic areas is for the period beginning October 1, 2012 and ending September 30, 2015. To apply for designation or for more information, contact Eric J. Jabs at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Idaho, Ohio Valley and Utah official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the

applicants. Submit all comments to Eric J. Jabs at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–5245 Filed 3–2–12; 8:45 am]

BILLING CODE 3410–KD–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting Notice

DATE AND TIME: Thursday, March 8, 2012, 3:15 p.m.

PLACE: Middle East Broadcasting Networks, Suite D, 7600 Boston Blvd., Springfield, VA 22153.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. At the meeting, the BBG will consider a resolution to award and present David Burke Distinguished Journalism Awards, three resolutions honoring employees for their service, a resolution honoring the 10th anniversary of Radio Sawa, and a resolution for 2012 policy statements on sexual harassment and equal employment opportunity. The BBG will receive and consider a report from the Governance Committee regarding Board leadership, Board operating procedures, and the status of BBG-sponsored grantees consolidation and future structure for U.S. international broadcasting. The BBG will recognize the anniversaries of Agency language services and receive a budget update and an update on the Commission on Innovation. The BBG will receive reports from the International Broadcasting Bureau Director, the Communications and External Affairs Director, the VOA Director, the Office of Cuba Broadcasting Director, and the Presidents of Radio Free Europe/Radio Liberty, Radio Free Asia, and the Middle East Broadcasting Networks. The meeting is open to public observation via streamed webcast, both live and on-demand, on the BBG's public Web site at *www.bbg.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2012–5417 Filed 3–1–12; 4:15 pm]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Arkansas Advisory Committee to the Commission will convene by conference call at 2 p.m. and adjourn at approximately 3:30 p.m. on Monday, April 2, 2012. The purpose of this meeting is to continue planning civil rights project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 56024166. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on March 26, 2012.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by May 2, 2012. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be emailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Central Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 29, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–5244 Filed 3–2–12; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a State Advisory Committee (SAC) meeting of the Louisiana Advisory Committee to the Commission will convene on Thursday, March 29, 2012 at 2 p.m. and adjourn at approximately 5 p.m. (CST). The meeting will convene at BERIA Bank, 1101 East Admiral Doyle Drive, Suite 202, New Iberia, LA 70560. The purpose of the meeting is to conduct a briefing and planning meeting to collect preliminary information concerning potential racial disparities in the high incarceration of African-Americans in state-operated prisons.

The meeting is open to the public or through the following toll-free call-in number 1 (866) 364–7584, conference call access code number 56366308. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on March 22, 2012.

Members of the public are entitled to submit written comments. The comments must be received in the

regional office by April 30, 2012. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by email to *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Central Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 29, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–5252 Filed 3–2–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Islands Region Seabird-Fisheries Interaction Recovery Reporting.

OMB Control Number: 0648–0456.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 1.

Average Hours per Response: 1 hour.

Burden Hours: 3.

Needs and Uses: This request is for extension of a currently approved information collection.

The National Marine Fisheries Service (NMFS) requires longline vessel operators to notify NMFS in the event an endangered short-tailed albatross is hooked or entangled during fishing operations. Following the retrieval of the seabird from the ocean, as required by Federal regulations at 50 CFR 665.815, the vessel captain must record the condition of the injured short-tailed albatross on a recovery data form. The information will be used by a veterinarian in providing advice to the captain caring for the short-tailed albatross. If the albatross is dead, the captain must attach an identification tag to the carcass to assist the United States Fish and Wildlife Service (USFWS) biologists in follow-up studies on the specimen. This collection is one of the terms and conditions contained in the biological opinion issued by USFWS, and is intended to maximize the probability of the long-term survival of short-tailed albatross accidentally taken by longline gear.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: February 29, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–5283 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Quarterly Services Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before May 4, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Roderick Asekhauno, U.S. Census Bureau, 8K168A, Washington, DC 20233–6500, 301–763–2154, or *Roderick.I.Asekhauno@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Quarterly Services Survey (QSS) covers employer firms with establishments located in the United States and classified in select service industries as defined by the North American Industry Classification System (NAICS). The QSS coverage currently includes all or parts of the following NAICS sectors: Utilities (excluding government owned); transportation and warehousing (except rail transportation and postal) services; information; finance and insurance (except funds, trusts, and other financial vehicles); real estate and rental and leasing; professional, scientific, and technical services; administrative and support and waste management and remediation services; educational services (except elementary and secondary schools, junior colleges, and colleges, universities, and professional schools); health care and social assistance; arts, entertainment, and recreation; and other services (except public administration). The primary estimates produced from the QSS are quarterly estimates of total operating revenue and the percentage of revenue by source. The survey also produces estimates of total operating expenses from tax-exempt firms in industries that have a large not-for-profit component. In addition, for hospitals, the survey produces estimates of the number of inpatient days and discharges and for

select industries in arts, entertainment, and recreation sector, the survey produces estimates of admissions revenue. Beginning in March 2013, with the introduction of a new QSS sample, the QSS will also provide estimates of revenue for the accommodation subsector and estimates for interest income, loan fees, fees and commissions, financial planning and investment management, and net gains and losses from brokering for select finance and insurance industries.

Firms are selected for this survey using a stratified design with strata defined by industry, tax status, and estimated size based on annual revenue. The sample consists of approximately 18,000 firms and consists of a subsample of firms from the larger Service Annual Survey. Each quarter the QSS sample is updated to reflect the addition of new businesses and the removal of firms that have gone out-of-business.

The Bureau of Economic Analysis uses the survey results as input to its quarterly Gross Domestic Product (GDP) and GDP by industry estimates. The estimates provide the Federal Reserve Board and Council of Economic advisors with timely information to assess current economic performance. The Centers for Medicare and Medicaid Services use the QSS estimates to develop hospital-spending estimates for the National Accounts. Other government and private stakeholders also benefit from a better understanding of important cyclical components of our economy.

II. Method of Collection

We will collect this information by mail, facsimile, Internet, and a telephone follow-up.

III. Data

OMB Control Number: 0607–0907.

Form Number: QSS–1(A), QSS–1(E), QSS–2(A), QSS–2(E), QSS–3(A), QSS–3(E), QSS–4(A), QSS–4(E), QSS–5(A), QSS–5(E), QSS–6(A), QSS–6(E), QSS–7(A), QSS–7(E), QSS–8(A), QSS–8(E), QSS–9(A), QSS–9(E), QSS–0(A), QSS–0(E), QSS1P(A), QSS1P(E), QSS4f(A), QSS–4f(E).

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, and government hospitals.

Estimated Number of Respondents: 23,500.

Estimated Time per Response: 15 minutes: QSS–1(A), QSS–1(E), QSS–2(A), QSS–2(E), QSS–3(A), QSS–3(E), QSS–5(A), QSS–5(E), QSS–6(A), QSS–6(E), QSS–7(A), QSS–7(E), QSS–8(A), QSS–8(E), QSS–9(A), QSS–9(E), QSS–0(A), QSS–0(E), QSS1P(A), QSS1P(E). 10 minutes: QSS–4(A), QSS–4(E), QSS4f(A), QSS–4f(E).

Estimated Total Annual Burden Hours: 20,900.

Estimated Total Annual Cost: $692,835.

Respondents Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 28, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–5189 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Temporarily Denying Export Privileges

Delfin Group USA LLC, 4950 Virginia Avenue, North Charleston, South Carolina 29405. 650 Saint Regis Lane, Alpharetta, Georgia 30022. Marcos Baghdasarian, 4950 Virginia Avenue, North Charleston, South Carolina 29405. 650 Saint Regis Lane, Alpharetta, Georgia 30022. Bagdel Corporation, 4950 Virginia Avenue, North Charleston, South Carolina 29405. 650 Saint Regis Lane, Alpharetta, Georgia 30022. Naren Sachanandani, P.O. Box 9645, Q4–280, Sharjah Airport International Free Zone, Sharjah, United Arab Emirates. Do-It FZC, P.O. Box 9645, Q4–280, Sharjah Airport International Free Zone, Sharjah, United Arab Emirates. Respondents.

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR'' or the ''Regulations''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I issue an Order temporarily denying, for a period of 180 days, the export privileges under the EAR of:

1. Delfin Group USA LLC, 4950 Virginia Avenue, North Charleston, South Carolina 29405.
   650 Saint Regis Lane, Alpharetta, Georgia 30022.
2. Marcos Baghdasarian, 4950 Virginia Avenue, North Charleston, South Carolina 29405.
   650 Saint Regis Lane, Alpharetta, Georgia 30022.
3. Bagdel Corporation, 4950 Virginia Avenue, North Charleston, South Carolina 29405.
   650 Saint Regis Lane, Alpharetta, Georgia 30022.
4. Naren Sachanandani, P.O. Box 9645, Q4–280, Sharjah Airport International Free Zone, Sharjah, United Arab Emirates.
5. Do-It FZC, P.O. Box 9645, Q4–280, Sharjah Airport International Free Zone, Sharjah, United Arab Emirates.

Legal Standard

Pursuant to Section 766.24(b) of the Regulations, BIS may issue a TDO upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that ''the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

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[1] The EAR is currently codified at 15 CFR parts 730–774 (2011). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). 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 50661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (''IEEPA'').

Background and Findings

OEE has presented evidence that beginning in or about mid-2010, and continuing thereafter, Delfin Group USA LLC (''Delfin'') and its president, Markos Baghdasarian (''Baghdasarian''), have conspired with multiple entities and individuals, including entities and individuals located in the United Arab Emirates (''UAE''), to export U.S.-origin items subject to the Regulations from the United States to Iran, via transshipment through the UAE, without obtaining the required authorization from the U.S. Government. Delfin/Baghdasarian have used Bagdel Corporation (''Bagdel''), a freight forwarding company, to facilitate the export and attempted export of the items—polymers and lubricating oils or oil additives, including aviation engine lubricating oils—from the United States to Iran via the UAE. Baghdasarian is the chief executive officer of Bagdel.

The evidence indicates that beginning in or about June 2010, Delfin/Baghdasarian conspired with Naren Sachanandani (''Sachanandani'') and his company Do-It FZC and others to develop a scheme to obtain U.S.-origin items for Iranian customers or potential customers, including Pars Oil & Gas Company (''Pars Oil''), a subsidiary of the Iranian-government owned National Iranian Oil Company. Do-It FZC is located at the Sharjah Airport International Free Zone in the UAE. Pursuant to this scheme, the items exported by Delfin and forwarded by Bagdel or others would be re-labeled or re-packaged after they arrived in the UAE and transshipped on to Iran.

Delfin/Baghdasarian have filed at least 17 shipper's export declarations (''SEDs'') between February 3, 2011 and January 29, 2012, that relate to the export of the items in quantities valued in the millions of dollars in the aggregate and that identify Do-It FZC or another UAE general trading company as the ultimate consignee. Open source information indicates that Sachanandani is the owner of Do-It FZC, which is listed as the ultimate consignee on 15 of the 17 SEDs, and evidence also indicates that Do-It FZC and the other UAE general trading company are not end users of such items, especially in such large quantities.

As provided in Section 746.7 of the Regulations, no person may export to Iran any item that is subject to the EAR, if such transaction is prohibited by the Iranian Transactions Regulations (''ITR'') [2] and has not been authorized by OFAC. Under Section 560.204 of the ITR, the exportation, reexportation, sale or supply, directly or indirectly, from the United States of any goods to Iran is prohibited by the ITR, including the exportation, reexportation, sale or supply of items from the United States to a third country, such as the UAE, undertaken with knowledge or reason to know that the items are intended for supply, transshipment, or reexportation, directly or indirectly, to Iran. OFAC authorization was not obtained for any of the export transactions at issue. The evidence shows that Respondents were aware of the prohibitions on exporting U.S.-origin items to Iran and developed a scheme to evade these prohibitions.

When OEE sought documents from Delfin relating to an export transaction in or about late August 2011, those efforts were ignored by Delfin and no documents or other cooperation provided. More recently, U.S. law enforcement and customs agents have been able to administratively detain several recent Delfin exports or attempted exports at U.S. ports concerning which Do-It FZC was listed as the ultimate consignee. Additionally, OEE has issued redelivery orders in accordance with Section 758.8 of the Regulations for additional shipments that had left the United States, but had not reached Do-It FZC.

These administrative measures, however, contain limitations and provide U.S. law enforcement and customs agents with an extremely short window in which to attempt to detect and then seek to stop a shipment once an SED has been filed. Moreover, administrative detentions by U.S. Customs and Border Patrol are not indefinite and OEE re-delivery orders rely on the cooperation of vessel owners or other carriers to turn shipments around and/or on foreign governments to timely intercept and detain shipments after they have arrived in their countries. The issuance of a TDO provides a more comprehensive and effective approach to preventing imminent violations before they occur, by giving notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR.

OEE submits, in sum, that violations of the EAR are imminent as defined in Section 766.24 of the Regulations. I agree based on the evidence of Respondents' deliberate, significant, and deceptive conduct designed to procure and export U.S.-origin items from the United States to Iran, including via transshipment through the UAE, without the required U.S. Government authorization. I also find that the conduct in this case is deliberate, significant, and likely to occur again absent the issuance of a TDO. Therefore, I find that a TDO naming Delfin Group USA LLC, Marcos Baghdasarian, Bagdel Corporation, Naren Sachanandani, and Do-It FZC is necessary, in the public interest, to prevent an imminent violation of the EAR.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

I. Order

It is therefore ordered:

First, that the Respondents, DELFIN GROUP USA LLC, 4950 Virginia Avenue, North Charleston, South Carolina 29405 and 650 Saint Regis Lane, Alpharetta Georgia 30022; MARCOS BAGHDASARIAN, 4950 Virginia Avenue, North Charleston, South Carolina 29405 and 650 Saint Regis Lane, Alpharetta Georgia 30022; BAGDEL CORPORATION, 4950 Virginia Avenue, North Charleston, South Carolina 29405 and 650 Saint Regis Lane, Alpharetta Georgia 30022; NAREN SACHANANDANI, P.O. Box 9645, Q4–280, Sharjah Airport International Free Zone, Sharjah, United Arab Emirates; and DO–IT FZC, P.O. Box 9645, Q4–280, Sharjah Airport International Free Zone, Sharjah, United Arab Emirates and each of their successors or assigns and, when acting for or on behalf of any of the foregoing, each of their officers, representatives, agents or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') 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 Export Administration Regulations (''EAR''), or in any other activity subject to the EAR 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 EAR, or in any other activity subject to the EAR; 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 EAR, or in any other activity subject to the EAR.

[2] 31 CFR Part 560.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a 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 a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR 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 EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a 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 this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

BIS may seek renewal of this Order by filing a written request with the Assistant Secretary of Commerce for Export Enforcement in accordance with the provisions of Section 766.24(d) of the EAR, which currently provides that such a written request must be submitted not later than 20 days before the expiration date. A Respondent may oppose a request to renew this Order in accordance with Section 766.24(d), including by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, supported by appropriate evidence. Any opposition ordinarily must be received not later than seven days before the expiration date of the Order.

Notice of the issuance of this Order shall be given to Respondents in accordance with Sections 766.5(b) and 766.24(b)(5) of the Regulations. This Order also shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Issued this 25th day of February 2012.

Donald G. Salo,

Deputy Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2012–5221 Filed 3–2–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches) From Japan: Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that JFE Steel Corporation (''JFE''); Nippon Steel Corporation (''Nippon''); NKK Tubes (''NKK''); and Sumitomo Metal Industries, Ltd. (''SMI'') made no shipments of merchandise subject to the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan during the period June 1, 2010, through May 31, 2011. Interested parties are invited to comment on the preliminary results.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6478.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2011, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on carbon and alloy seamless standard, line, and pressure pipe (over 4½ inches) from Japan for the period June 1, 2010, through May 31, 2011. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 31586 (June 1, 2011). On June 30, 2011, United States Steel Corporation (''U.S. Steel''), a domestic producer of the subject merchandise, made a timely request that the Department conduct an administrative review of JFE, Nippon, NKK, and SMI. On July 28, 2011, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews,* 76 FR 45227 (July 28, 2011).

On August 4, 2011, Nippon submitted a letter to the Department certifying that it made no shipments or entries for consumption in the United States of subject merchandise during the period of review (''POR''). On August 31, 2011, the Department issued its antidumping duty questionnaire to JFE, NKK, and SMI. On September 1, 2011, September 9, 2011 and September 19, 2011, SMI, NKK, and JFE, respectively, submitted letters to the Department certifying that each company made no shipments or entries for consumption in the United States of subject merchandise during the POR.

Scope of the Order

The products covered by the order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (''ASTM'') A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute (''API'') 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described

below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of the order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of the order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of the order.

Specifically excluded from the scope of the order are: A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. B. Finished and unfinished oil country tubular goods (''OCTG''), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in the scope when used in standard, line or pressure applications. C. Products produced to the A–335 specification unless they are used in an application that would normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications. D. Line and riser pipe for deepwater application, *i.e.,* line and riser pipe that is: (1) Used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.,* ''API 5L'').

With regard to the excluded products listed above, the Department will not instruct U.S. Customs and Border Protection (''CBP'') to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based

on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Preliminary Determination of No Shipments

As noted above, all four of the potential respondents submitted letters to the Department indicating that they did not make any shipments or entries of subject merchandise to the United States during the POR. In response to the Department's query to CBP, CBP data showed subject merchandise manufactured by SMI may have entered for consumption into the United States during the POR. On December 14 and 20, 2011, the Department placed on the record of the review the CBP data and copies of the entry documents in question.

The Department confirmed with CBP the no shipment claims of NKK, JFE, and Nippon. Because the evidence on the record indicates NKK, JFE, and Nippon did not export subject merchandise to the United States during the POR, we preliminarily determine these three companies had no reviewable transactions during the POR.

On December 16, 2011, the Department requested that SMI substantiate its claims of no shipments. On January 20, 2012, SMI reiterated that it did not make any U.S. sales of subject merchandise during the POR and that it did not sell subject merchandise to any end users or distributors with knowledge that the subject merchandise would be subsequently exported to the United States during the POR. SMI did report selling subject merchandise through trading companies, distributors, and end users in Japan and third countries. However, SMI added that it neither initiated nor was aware of its subject merchandise being exported from Japan or third countries to the United States during the POR.

Based on SMI's submissions and our review of CBP documentation, the Department preliminarily determines that the record evidence supports SMI's explanation that, at the time of the sale, it had no knowledge that any of these entries of subject merchandise entered the United States during the POR. Accordingly, we preliminarily determine that subject merchandise produced by SMI entered the United States during the POR under its antidumping case number, but did so by way of intermediaries without its knowledge. See Memorandum to the File titled, ''Preliminary Determination of No Shipments in the Antidumping Duty Administrative Review on Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½ Inches) from Japan,'' dated concurrently with this notice for a full analysis. Thus, the Department finds that SMI's claim of no shipments or entries for consumption is substantiated. Based upon the certifications and the evidence on the record, we are satisfied that SMI had no shipments of subject merchandise to the United States during the POR, and, as such, we preliminarily determine that SMI had no reviewable transactions during the POR.

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents had been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. See 19 CFR 351.213(d)(3); *see also Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan: Rescission of Antidumping Duty Administrative Review,* 75 FR 38781 (July 6, 2010). In such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry. *See* 19 CFR 351.212(a)

In our May 6, 2003, ''automatic assessment'' clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (''*Assessment Policy Notice*'').

Because ''as entered'' liquidation instructions do not alleviate the concerns which the *Assessment Policy Notice* was intended to address, we determine that it is appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Nippon, JFE, SMI, and NKK, and exported by other parties at the all-others rate, should we continue to find that Nippon, JFE, SMI, and NKK had no shipments of subject merchandise in the POR in our final results. See, e.g., *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989, 56990 (September 17, 2010). In addition, the Department finds that it is more consistent with the Assessment Policy Notice not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Nippon, JFE, SMI, and NKK and to issue appropriate instructions to CBP based on the final results of the review. See the ''Assessment Rates'' section of this notice below.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, should be filed not later than five days after the time limit for filing case briefs. See 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Issues raised in the hearing will be limited to those raised in the case briefs.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, unless extended. *See* section

751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Cash-Deposit Requirements

If we continue to make a final determination of no shipments, cash deposit requirements will not change, and we will not issue cash deposit instructions to CBP. The following cash deposit requirements are currently in effect: (1) for previously reviewed or investigated companies, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (2) if the exporter is not a firm covered in a prior review or in the less-than-fair-value (''LTFV'') investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous segment of the proceeding, the cash-deposit rate will continue to be the all-others rate established in the LTFV investigation, which is 68.88 percent. *See Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa,* 65 FR 39360 (June 26, 2000). These deposit requirements continue to remain in effect until further notice.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue appraisement instructions directly to CBP 15 days after the date of publication of the final results of this review.

As noted above, the Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification will apply to POR entries by all respondent companies if we continue to make a final determination of no shipments because they certified that they made no POR shipments of subject merchandise for which they had knowledge of U.S. destination. We will instruct CBP to liquidate these entries at the all-others rate established in the less-than-fair-value investigation, 68.88 per cent, if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 24, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–5261 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished From the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander and Erin Kearney, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0182 and (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION: On July 28, 2011, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on tapered roller bearings (''TRBs'') and parts thereof, finished or unfinished from the People's Republic of China. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews,* 76 FR 45227 (July 28, 2011). The period of review (''POR'') is June 1, 2010, through May 31, 2011.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the ''Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. 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 time period to a maximum of 365 days.

The Department is extending the preliminary results by 120 days because the Department needs additional time to analyze information pertaining to Changshan Peer Bearing Co., Ltd.'s (''CPZ/SKF'') and Peer Bearing Company's (''Peer/SKF'') U.S. sales and factors of production data and issue additional supplemental questionnaires. In addition, prior to the preliminary results, the Department will be conducting a mandatory verification of CPZ/SKF and Peer/SKF. Therefore, in accordance with section 751(a)(3)(A) of the Act, because the Department finds that it is not practicable to complete the review within the original deadlines, the Department is extending the time period for completing the preliminary results of the instant administrative review by 120 days, from March 1, 2012, until June 29, 2012. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: February 23, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–5257 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting the sixth

administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand. The respondents which the Department selected for individual examination are Pakfood Public Company Limited and its affiliated subsidiaries (collectively, ''Pakfood'') [1] and Thai Royal Frozen Food Co., Ltd. (TRF). The respondents which were not selected for individual examination are listed in the ''Preliminary Results of Review'' section of this notice. The period of review (POR) is February 1, 2010, through January 31, 2011.

We preliminarily determine that Pakfood and TRF have made sales at below normal value (NV) and, therefore, are subject to antidumping duties. In addition, based on the preliminary results for the respondents selected for individual examination, we have preliminarily determined a margin for those companies that were not individually examined.

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Holly Phelps, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand.[2] On February 1, 2011, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from Thailand for the period February 1, 2010, through January 31, 2011.[3] In response to timely requests from interested parties pursuant to 19 CFR 351.213(b)(1) and (2) to conduct an administrative review of the U.S. sales of shrimp by numerous Thai producers/exporters, the Department published a notice of initiation of administrative review for 156 companies.[4]

In the *Initiation Notice,* the Department indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), we would select mandatory respondents for individual examination based upon CBP entry data. *See Initiation Notice,* 76 FR at 18157.

In April 2011, we received comments on the issue of respondent selection from the petitioner,[5] the American Shrimp Processors Association (ASPA), and three producers/exporters of subject merchandise ((Marine Gold Products Limited (MRG)), Pakfood, and TRF). In its comments, MRG requested that the Department accept it as a voluntary respondent if it were not selected as a mandatory respondent.

From April through June 2011, we received statements from 14 companies that indicated that they had no shipments of subject merchandise to the United States during the POR. In May 2011, after considering the large number of potential exporters or producers involved in this administrative review, and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.[6] As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two producers/exporters accounting for the largest volume of certain frozen warmwater shrimp from Thailand during the POR (*i.e.,* Pakfood and TRF). Accordingly, we issued the antidumping duty questionnaire to Pakfood and TRF.

As part of the respondent selection process, we outlined the conditions under which the Department would analyze data filed by voluntary respondents in the current review, stating that we would only do so if the mandatory respondents failed to respond to the Department's requests for information. *See* Respondent Selection Memo, at 18. In June 2011, we notified MRG that, although it was not a respondent in the review, the Department would accept its voluntary responses as timely filed if received by the same deadlines as set for the mandatory respondents. Also in June, we received responses from MRG, Pakfood, and TRF to section A (*i.e.,* the section related to general information) of the Department's questionnaire.

In July 2011, we received responses from MRG and Pakfood to section B (*i.e.,* the section covering the comparison market sales), section C (*i.e.,* the section covering the U.S. market sales), and section D (*i.e.,* the section covering cost of production (COP) and constructed value (CV)) of the Department's questionnaire.

In August 2011, we received responses from TRF to sections B and C of the Department's questionnaire. Also, in August 2011, the petitioner and the ASPA filed company-specific sales-below-cost allegations for TRF.

In September 2011, the Department initiated a sales-below-cost investigation for TRF, and we instructed TRF to respond to section D of the Department's questionnaire.[7] In this same month, we also received TRF's section D response.

In October 2011, the Department extended the preliminary results in the current review to no later than February 28, 2012.[8] Also in October 2011, the Department received additional requests from MRG that it be reviewed as a voluntary respondent in the current segment of the proceeding.

In November and December 2011, we issued supplemental sales and cost questionnaires to Pakfood and TRF, and we received responses to these

[1] These subsidiaries are: Okeanos Co., Ltd., Okeanos Food Co., Ltd., Takzin Samut Co., Ltd., Chaophraya Cold Storage Co., Ltd., and Asia Pacific (Thailand) Company Ltd.

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand,* 70 FR 5145 (Feb. 1, 2005) (*Shrimp Order*).

[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 5559 (Feb. 1, 2011).

[4] *See Certain Frozen Warmwater Shrimp From Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews,* 76 FR 18157 (Apr. 1, 2011) (*Initiation Notice*). Following the publication of the *Initiation Notice,* several companies provided clarifications regarding their legal company names and/or addresses. As a result, the number of companies covered by this administrative review has been adjusted to reflect these clarifications.

[5] The petitioner is the Ad Hoc Shrimp Trade Action Committee.

[6] *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from Holly Phelps, Analyst, Office 2, AD/CVD Operations, entitled, ''2010–2011 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand: Selection of Respondents for Individual Review,'' dated May 19, 2011 (Respondent Selection Memo).

[7] *See* Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team, entitled, ''2010–2011 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Ad Hoc Shrimp Trade Action Committee's and the American Shrimp Processors Association's Allegations of Sales Below the Cost of Production for Thai Royal Frozen Food Co., Ltd.,'' dated September 14, 2011 (TRF Cost Investigation Memo).

[8] *See Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the 2010–2011 Administrative Reviews,* 76 FR 61668 (Oct. 5, 2011).

supplemental questionnaires in the same months. We also issued an additional supplemental sales and cost questionnaire to TRF in January 2012, and we received the response to this supplemental questionnaire in February 2012. Also in February 2012, MRG again requested to be reviewed as a voluntary respondent in the current segment of the proceeding.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[9] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (Penaeus notialis), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Thai white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Voluntary Respondents

As noted above, throughout the course of this review, MRG has requested to be treated as a voluntary respondent, and it responded to the Department's questionnaire in a timely manner. In MRG's most recent request on February 13, 2012, the company cited a recent decision by the Court of International Trade (CIT) involving the selection of voluntary respondents.[10] MRG pointed out that the CIT in *Grobest* held that, in order for section 782(a)(2) of the Act to be meaningful, the Department must review a voluntary respondent unless it has made an independent determination that such a review would be unduly burdensome and would inhibit the timely completion of the investigation. *See Grobest* at 41–42.

According to MRG, the Department still has adequate time to examine the voluntary responses submitted by MRG. Additionally, MRG argues that, because it has served as a mandatory respondent in the two most recently completed reviews and has submitted timely responses in this proceeding, the Department's examination of MRG would not be unduly burdensome or inhibit the timely completion of this review.

In the Respondent Selection Memo, we explained that, based on our anticipated workload, we only had the resources to examine individually two companies in this review. The review of these two companies included analysis of the initial questionnaire responses, as well as the issuance of several supplemental questionnaires and analysis of their respective responses. This process required the Department to extend the deadline for the preliminary results because it was not practicable to complete the review within the original deadline. Thus, prior to the preliminary results, it would have been unduly burdensome and would have inhibited the timely completion of this review for the Department to have selected a voluntary respondent. In light of the CIT's ruling in *Grobest,* we have again examined our resources.[11] Based on this reexamination, we find that we do not to have the resources to accept additional respondents in this segment of the proceeding.[12] As a result, accepting MRG as a respondent would be unduly burdensome, as the Department would have to assign staff to analyze its responses (in addition to completing their other casework within the statutory deadlines). Moreover, because this analysis would have to be performed, and MRG's responses to any supplemental questionnaires would be received, after the preliminary results, accepting MRG as a voluntary respondent would inhibit the timely completion of this review.

With respect to MRG's claim that its questionnaire responses are complete

[9] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[10] *See Grobest & I–Mei Industrial (Vietnam) Co., Ltd., et al. v. United States,* Slip Op. 12–9 (CIT Jan. 18, 2012) (*Grobest*).

[11] We note that the litigation surrounding *Grobest* has not been finalized. The Department's results of remand redetermination are due to the CIT by March 16, 2012.

[12] AD/CVD Operations Office 2, the office to which this administrative review is assigned, has been responsible for conducting a number of additional less-than-fair-value investigations and administrative reviews (*e.g.,* LTFV investigations on large residential washers from the Republic of Korea and Mexico, the first administrative review of the antidumping duty order on narrow woven ribbons with woven selvedge from Taiwan, etc.) since the initiation of this case. These additional cases continue to place significant constraints on staffing assignments.

and thorough, we have no way to evaluate this statement without analyzing these responses. However, in the fifth administrative review, when MRG was a mandatory respondent, the Department issued four supplemental questionnaires to MRG prior to the preliminary results, and we have no reason to believe that its responses would not require a similar level of analysis here. Indeed, Pakfood has participated in five administrative reviews of this order (*i.e.,* three more than MRG) and the Department issued multiple supplemental questionnaires to this respondent. Given the number of supplemental questionnaires issued to the mandatory respondents in this proceeding, as well as our experience with MRG during the most recent administrative review in which it was a mandatory respondent, we expect that the examination of MRG during this proceeding would require a significant expenditure of resources, would be unduly burdensome, and would inhibit the timely completion of this review.

Therefore, we have not calculated an individual rate for MRG for purposes of the preliminary results; instead, we have assigned MRG the review-specific average rate of 1.48 percent.

Preliminary No Shipment Determination

As noted in the ''Background'' section, above, in April and May 2011, 14 companies notified the Department that they had no shipments of subject merchandise to the United States during the POR. Only nine of these claims, however, were properly filed and/or contained information sufficient to determine whether shipments were, in fact, made. The Department subsequently confirmed with CBP the no-shipment claims made by these nine companies. Because the evidence on the record indicates that these companies did not export subject merchandise to the United States during the POR, we preliminarily determine that the following nine companies had no reviewable transactions during the POR:

(1) Anglo-Siam Seafoods Co., Ltd.
(2) F.A.I.T. Corporation Limited
(3) Grobest Frozen Foods Co., Ltd.
(4) Lucky Union Foods Co., Ltd.
(5) Namprik Maesri Ltd., Part.
(6) S&P Syndicate Public Co., Ltd.
(7) Siamchai International Food Co., Ltd.
(8) Thai Union Manufacturing Co., Ltd.
(9) V. Thai Food Product Co., Ltd.[13]

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR.[14] As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, ''automatic assessment'' clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.[15]

Because ''as entered'' liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the nine companies listed above and exported by other parties, at the all-others rate, should we continue to find that these companies had no shipments of subject merchandise in the POR in our final results.[16] In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to these nine companies and issue appropriate instructions to CBP based on the final results of the review. *See* the ''Assessment Rates'' section of this notice, below.

With respect to the remaining five companies which submitted deficient statements of no shipments during the POR, three of the five companies (*i.e.,* Calsonic Kansei (Thailand) Co., Ltd., Gulf Coast Crab International Co., Ltd., and Preserved Food Specialty Co., Ltd.) did not properly certify their statements of no shipments in accordance with 19 CFR 351.303(g)(1). The remaining two companies (*i.e.,* Daedong (Thailand) Co., Ltd. and Tep Kinsho Foods, Ltd.) submitted statements of no shipments containing inadequate information. Although we contacted each of these companies to request that they correct the deficiencies, none has responded to our requests. Therefore, we preliminarily find that there is insufficient evidence on the record of this review to conclude that these companies made no shipments of subject merchandise to the United States during the POR, and we have assigned each of the five companies listed above a preliminary dumping rate based on the average of the rates calculated for Pakfood and TRF.

Comparisons to Normal Value

To determine whether sales of shrimp from Thailand to the United States were made at less than NV, we compared the export price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to sections 773(a)(1)(B)(i) and 777A(d)(2) of the Act, for Pakfood and TRF, we compared the EPs of individual U.S. transactions, as applicable, to the weighted-average NV of the foreign like product in the appropriate corresponding calendar month where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by Pakfood and TRF covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of shrimp to sales of shrimp made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales of non-broken shrimp to sales of the most similar non-broken foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Pakfood and TRF in the following order: cooked form, head status, count size, organic certification, shell status, vein

[13] This company was listed in the *Initiation Notice* as V Thai Food Product.

[14] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997).

[15] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[16] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (Sept. 17, 2010); and *Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results of Antidumping Duty Administrative Review,* 75 FR 76700, 76701 (Dec. 9, 2010).

status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative. Where there were no sales of identical or similar non-broken merchandise, we made product comparisons using CV, as discussed in the ''Calculation of Normal Value Based on Constructed Value'' section below. *See* section 773(a)(4) of the Act.

With respect to sales comparisons involving broken shrimp, we compared Pakfood's sales of broken shrimp in the United States to sales of comparable quality shrimp in the home market. Where there were no sales of identical broken shrimp in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales of broken shrimp to sales of the most similar broken shrimp made in the ordinary course of trade. Where there were no sales of identical or similar broken shrimp, we made product comparisons using CV. TRF did not make sales of broken shrimp to the United States during the POR. Therefore, we disregarded TRF's home market sales of broken shrimp for purposes of product comparisons.

Export Price

For all U.S. sales made by Pakfood and TRF, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted based on the facts of record.

A. Pakfood

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign warehousing expenses, foreign inland freight expenses, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, FDA inspection expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees), where appropriate, in accordance with section 772(c)(2)(A) of the Act. Finally, we adjusted foreign warehousing expenses to account for services that were provided by affiliated parties at prices that were not at arm's length.[17]

B. TRF

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments to the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign inland freight expenses, foreign gate charges, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees), where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. *See* section 773(a)(1)(C) of the Act. Based on this comparison, we determined that Pakfood and TRF had viable home markets during the POR. Consequently, we based NV on home market sales for Pakfood and TRF.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[18] In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.,* NV based on either home market or third country prices),[19] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[20]

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment is possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See, e.g., OJ from Brazil,* 75 FR at 51001.

In this administrative review, we obtained information from both respondents regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Pakfood

Pakfood reported that it made EP sales through a single channel of distribution (*i.e.,* direct sales to distributors). We examined the selling activities performed for U.S. sales and found that Pakfood performed the following selling functions: sales forecasting, market research, sales promotion, advertising, order processing, procurement/sourcing

[17] *See* the Memorandum to the File, from Holly Phelps, Analyst, Office 2, AD/CVD Operations, entitled, ''Calculation Adjustments for Pakfood Public Company Limited and its affiliated subsidiaries, Okeanos Co., Ltd., Okeanos Food Co., Ltd., Takzin Samut Co., Ltd., Chaophraya Coldstorage Co., Ltd., and Asia Pacific (Thailand) Company Ltd. (collectively, ''Pakfood''), for the Preliminary Results in the 2010–2011 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand,'' dated February 28, 2012 (Pakfood Sales Calculation Memo).

[18] *Id; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part,* 75 FR 50999, 51001 (Aug. 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

[19] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

[20] *See Micron Tech., Inc.* v. *United States,* 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

services, direct sales personnel, provision of cash discounts, payment of commissions, freight and delivery services, warehousing, and packing. Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, based on the selling function categories, we find that Pakfood performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel (*i.e.,* direct sales to unaffiliated customers) and the selling activities to Pakfood's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Pakfood reported that it made sales to manufacturers, distributors, retailers, and end-users. Pakfood stated that its home market sales were made through a single channel of distribution, direct from factory to customer, and that it performed the following selling functions for sales to home market customers: sales forecasting, market research, sales promotion, advertising, procurement/sourcing services, order processing, direct sales personnel, provision of cash discounts, freight and delivery services, warehousing, and packing. Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; and (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, we find that Pakfood performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for all customers in the home market. Because all sales in the home market sales are made through a single distribution channel and the selling activities to Pakfood's customers did not vary within this channel, we preliminarily determine that there is one LOT in the home market for Pakfood.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers are virtually identical, with the exception of commission payments made for certain U.S. sales. We note that this difference is not a sufficient basis to determine that the U.S. LOT is different from the home market LOT. Moreover, although there are some differences in the level of intensity at which some of the selling functions were performed in the two markets (*i.e.,* more advertising and sales promotion to home market customers, and more packing to U.S. customers), we find that these differences are not significant. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

2. TRF

TRF reported that it made sales through one channel of distribution in the United States (*i.e.,* EP sales made directly to unaffiliated customers). TRF reported performing the following selling functions for its U.S. sales: sales forecasting; customer contact; price negotiation; order processing; invoice issuance; delivery arrangements; preparation of company quality certificate; payment receipt; storage of finished goods prior to sale; warranty services; and sales support. These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on the selling function categories, we find that TRF performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for all U.S. sales.

With respect to the home market, TRF reported that it made sales through two channels of distribution (*i.e.,* direct sales made by TRF to the unaffiliated customer; and sales made by TRF to an affiliated reseller). In determining whether separate LOTs exist in the home market, we compared the selling functions performed across all channels of distribution. TRF reported that it performed the following selling functions for sales to all home market customers: sales forecasting; customer contact; price negotiation; short-term/spot contracts; order processing; invoice issuance; delivery arrangements; company quality certificate; payment receipt; storage of finished goods prior to sale; warranty services; and sales support. These selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support.

In addition to these activities, TRF reported that its affiliated reseller maintained an extensive retail presence in Thailand during the POR and performed the following additional selling activities for its sales: independent sales forecasting, market research, sales promotion/trade shows/advertising, commission payments, direct sales personnel, inventory maintenance, freight and delivery, personnel training, provision of discounts, after-sales services, repacking services, and procurement/sourcing services. These additional selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. The provision of these additional activities is sufficient to determine that the four selling functions that TRF performed on sales through its affiliated reseller were at a higher degree of intensity than those performed on its direct sales to unaffiliated parties. Therefore, because the provision of these additional selling activities demonstrates a significant difference in selling functions, we find that TRF's sales through its affiliated reseller were at a more advanced LOT than its direct sales to unaffiliated parties. Accordingly, based on the totality of the facts and circumstances, we preliminarily determine that TRF made sales at two LOTs in the home market.

Finally, we compared the U.S. LOT to the home market LOTs and found that the U.S. LOT is the same as the home market LOT for TRF's direct sales to unaffiliated parties because the selling functions performed by TRF are essentially the same in both markets. However, the selling functions TRF performed for home market sales through its affiliated reseller are at a higher degree of intensity and greater in number than the selling functions performed for TRF's U.S. sales. We conclude that this difference is sufficient to determine that TRF's home market sales through its affiliated reseller are at a different LOT than its U.S. sales. Additionally, because the home market LOT of TRF's sales through its affiliated reseller is at a different stage of distribution than TRF's U.S. LOT, an LOT adjustment is warranted.

When calculating a LOT adjustment, under section 773(a)(7)(A) of the Act, the Department determines whether a pattern of consistent price differences exists between the LOTs and, if so, then a LOT adjustment is possible. The Department makes a LOT adjustment to normal value using the weighted-average difference, as determined on a

model-specific basis for models sold, in prices between the home market LOTs. In the current review, because TRF's home market sales show a consistent pattern of price differences between the LOTs, a LOT adjustment is possible. Therefore, we made a LOT adjustment to NV on all price-to-price comparisons involving sales made at different LOTs.

C. Cost of Production Analysis

We found that Pakfood made sales in the same comparison market below the COP in the most recently completed segment of this proceeding as of the date of initiation of this review and such sales were disregarded.[21] Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, we found that there were reasonable grounds to believe or suspect that Pakfood made sales in the home market at prices below the cost of producing the merchandise in the current POR.

Moreover, on August 23, 2011, the petitioner and the ASPA alleged that TRF made sales in the home market, during the POR, that were below the COP. Based on our analysis of the allegations made by the petitioner and the ASPA, we found that TRF's home market sales which fell below the COP were representative of the broader range of sales which may be used as a basis for normal value. Therefore, we determined, on this basis as well, that there were reasonable grounds to believe or suspect that TRF's sales of shrimp in the home market were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether TRF's sales were made at prices below its COP. *See* TRF Cost Investigation Memo.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (*see* ''Test of Comparison Market Sales Prices'' section, below, for treatment of home market selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation. We made no adjustments to Pakfood's or TRF's reported COP data for purposes of the preliminary results. However, we note that TRF omitted certain products sold in the home market during the POR from its COP data. Therefore, we have used the cost data reported in TRF's home market sales database for these products.[22]

Based on our review of the record evidence, neither Pakfood nor TRF appeared to experience significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Pakfood's and TRF's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no home market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act. *See* the ''Calculation of Normal Value Based on Constructed Value'' section below.

D. Calculation of Normal Value Based on Comparison Market Prices

1. Pakfood

We based NV for Pakfood on ex-factory or delivered prices to unaffiliated customers in the home market. Where appropriate, we made adjustments to the starting price for billing adjustments. We also made deductions, where appropriate, from the starting price for inland freight and warehousing expenses, under section 773(a)(6)(B)(ii) of the Act. We adjusted certain company-specific warehousing expenses to account for services that were provided by affiliated parties at prices that were not at arm's length. *See* the Pakfood Sales Calculation Memo.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including imputed credit expenses, bank fees, and express mail charges) and commissions, where appropriate. Because commissions were paid only in the U.S. market, we made a downward adjustment to NV for the lesser of: (1) the amount of the commission paid in the U.S. market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the home market. *See* 19 CFR 351.410(e).

Finally, for all price-to-price comparisons, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

[21] *See Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination,* 76 FR 40881, 40883 (July 12, 2011).

[22] *See* the memorandum from Ji Young Oh, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Thai Royal Frozen Food Co., Ltd.,'' dated February 28, 2012.

2. TRF

For TRF, we calculated NV based on delivered prices to unaffiliated customers in the home market. We made adjustments to the starting price, where appropriate, for billing adjustments and rebates, in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland freight expenses, under section 773(a)(6)(B) of the Act.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including bank fees and imputed credit expenses) and commissions, where appropriate. Because commissions were paid only on sales in the home market, we also made an upward adjustment to NV for the lesser of: (1) the amount of commissions paid in the home market; or (2) the amount of indirect selling expenses incurred in the U.S. market. *See* 19 CFR 351.410(e).

For all price-to-price comparisons, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

In accordance with section 773(a)(1)(B)(i) of the Act, we based NV, to the extent practicable, on sales at the same LOT as the EP. Where price-to-price comparisons were made at different LOTs, we made an adjustment to NV, in accordance with section 773(a)(7)(A) of the Act. *See* the ''Level of Trade'' section above.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those shrimp products for which we could not determine the NV based on comparison market sales because, as noted in the ''Results of the COP Test'' section above, all sales of the comparable products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the ''Cost of Production Analysis'' section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses to, CV. *See* 19 CFR 351.410(c). We also made an adjustment for Pakfood, when applicable, for home market indirect selling expenses to offset U.S. commissions in EP comparisons. *See* 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars for all spot transactions by Pakfood and all transactions by TRF, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. In addition, Pakfood reported that it purchased forward exchange contracts which were used to convert its sales prices into home market currency. Under 19 CFR 351.415(b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department is directed to use the exchange rate specified with respect to such currency in the forward sale agreement to convert the foreign currency.[23] Therefore, for Pakfood we used the reported forward exchange rates for currency conversions where applicable.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2010, through January 31, 2011, as follows:

Manufacturer/exporter	Percent margin
Pakfood Public Company Limited/Asia Pacific (Thailand) Co., Ltd./Chaophraya Cold Storage Co., Ltd./Okeanos Co. Ltd./Okeanos Food Co. Ltd./Takzin Samut Co., Ltd.	0.97
Thai Royal Frozen Food Co., Ltd.	1.98
Review-Specific Average Rate Applicable to the Following Companies:[24]	

[23] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand,* 69 FR 76918 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 6; *see also Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Preliminary No Shipment Determination,* 76 FR 12025, 12031 (Mar. 4, 2011), unchanged in *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination,* 76 FR 41203 (July 13, 2011).

[24] This rate is based on the simple average of the margins calculated for those companies selected for individual review. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (Sept. 1, 2010) (*Bearings from France*).

[25] This company notified us that A. Wattanachai Frozen Products, on which we also initiated an administrative review, is a variation of its company name. The company's legal name is A. Wattanachai Frozen Products Co., Ltd.

[26] This company notified us that Golden Sea Frozen Foods, on which we also initiated an administrative review, is a variation of its company name. The company's legal name is Golden Sea Frozen Foods Co., Ltd.

[27] This company notified us that Kitchens of the Ocean (Thailand) Ltd., on which we also initiated an administrative review, is a variation of its company name. The company's legal name is Kitchens of the Oceans (Thailand) Ltd.

[28] This company notified us that SMP Foods Products Co., Ltd., and SMP Food Products Co., Ltd., on which we initiated an administrative review, are variations of its company name. The company's legal name is SMP Products, Co., Ltd.

[29] This company notified us that Surapon Seafood and Surapon Seafoods Public Co., Ltd, on which we initiated an administrative review, are variations of its company name. The company's legal name is Surapon Foods Public Co., Ltd.

[30] This company notified us that Thai World Imp. & Exp. Co. and Thai World Imports & Exports, on which we initiated an administrative review, are variations of its company name. The company's legal name is Thai World Import & Export Co., Ltd.

[31] This company notified us that Siam Union Frozen Foods, on which we also initiated an administrative review, is a variation of its company name. The company's legal name is The Siam Union Frozen Foods Co., Ltd.

Manufacturer/exporter	Percent margin
A Foods 1991 Co., Ltd./May Ao Co., Ltd./May Ao Foods Co., Ltd	1.48
A. Wattanachai Frozen Products Co., Ltd.[25]	1.48
A.S. Intermarine Foods Co., Ltd	1.48
ACU Transport Co., Ltd	1.48
Anglo-Siam Seafoods Co., Ltd	*
Apex Maritime (Thailand) Co., Ltd	1.48
Apitoon Enterprise Industry Co., Ltd	1.48
Applied DB	1.48
Asian Seafood Coldstorage (Sriracha)	1.48
Asian Seafoods Coldstorage Public Co., Ltd./Asian Seafoods Coldstorage (Suratthani) Co./STC Foodpak Ltd	1.48
Assoc. Commercial Systems	1.48
B.S.A. Food Products Co., Ltd	1.48
Bangkok Dehydrated Marine Product Co., Ltd	1.48
C Y Frozen Food Co., Ltd	1.48
C.P. Merchandising Co., Ltd	1.48
Calsonic Kansei (Thailand) Co., Ltd	1.48
Century Industries Co., Ltd	1.48
Chaivaree Marine Products Co., Ltd	1.48
Chaiwarut Company Limited	1.48
Charoen Pokphand Foods Public Co., Ltd	1.48
Chonburi LC	1.48
Chue Eie Mong Eak	1.48
Core Seafood Processing Co., Ltd	1.48
CP Retailing and Marketing Co., Ltd	1.48
Crystal Frozen Foods Co., Ltd. and/or Crystal Seafood	1.48
Daedong (Thailand) Co. Ltd	1.48
Daiei Taigen (Thailand) Co., Ltd	1.48
Daiho (Thailand) Co., Ltd	1.48
Dynamic Intertransport Co., Ltd	1.48
Earth Food Manufacturing Co., Ltd	1.48
F.A.I.T. Corporation Limited	*
Far East Cold Storage Co., Ltd	1.48
Findus (Thailand) Ltd	1.48
Fortune Frozen Foods (Thailand) Co., Ltd	1.48
Frozen Marine Products Co., Ltd	1.48
Gallant Ocean (Thailand) Co., Ltd	1.48
Gallant Seafoods Corporation	1.48
Global Maharaja Co., Ltd	1.48
Golden Sea Frozen Foods Co., Ltd[26]	1.48
Good Fortune Cold Storage Co., Ltd	1.48
Good Luck Product Co., Ltd	1.48
Grobest Frozen Foods Co., Ltd	*
GSE Lining Technology Co., Ltd	1.48
Gulf Coast Crab Intl	1.48
H.A.M. International Co., Ltd	1.48
Haitai Seafood Co., Ltd	1.48
Handy International (Thailand) Co., Ltd	1.48
Heng Seafood Limited Partnership	1.48
Heritrade	1.48
HIC (Thailand) Co., Ltd	1.48
High Way International Co., Ltd	1.48
I.T. Foods Industries Co., Ltd	1.48
Inter-Oceanic Resources Co., Ltd	1.48
Inter-Pacific Marine Products Co., Ltd	1.48
K & U Enterprise Co., Ltd	1.48
K Fresh	1.48
K. D. Trading Co., Ltd	1.48
K.L. Cold Storage Co., Ltd	1.48
KF Foods	1.48
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd	1.48
Kibun Trdg	1.48
Kingfisher Holdings Ltd	1.48
Kitchens of the Oceans (Thailand) Ltd[27]	1.48
Klang Co., Ltd	1.48
Kongphop Frozen Foods Co., Ltd	1.48
Kosamut Frozen Foods Co., Ltd	1.48
Lee Heng Seafood Co., Ltd	1.48
Leo Transports	1.48
Li-Thai Frozen Foods Co., Ltd	1.48
Lucky Union Foods Co., Ltd	*
Maersk Line	1.48
Magnate & Syndicate Co., Ltd	1.48
Mahachai Food Processing Co., Ltd	1.48

Manufacturer/exporter	Percent margin
Marine Gold Products Co., Ltd	1.48
Merit Asia Foodstuff Co., Ltd	1.48
Merkur Co., Ltd	1.48
Ming Chao Ind Thailand	1.48
N&N Foods Co., Ltd	1.48
Namprik Maesri Ltd. Part	*
Narong Seafood Co., Ltd	1.48
Nongmon SMJ Products	1.48
NR Instant Produce Co., Ltd	1.48
Ongkorn Cold Storage Co., Ltd./Thai-Ger Marine Co., Ltd	1.48
Pacific Queen Co., Ltd	1.48
Penta Impex Co., Ltd	1.48
Pinwood Nineteen Ninety Nine	1.48
Piti Seafoods Co., Ltd	1.48
Premier Frozen Products Co., Ltd	1.48
Preserved Food Specialty Co., Ltd	1.48
Queen Marine Food Co., Ltd	1.48
Rayong Coldstorage (1987) Co., Ltd	1.48
S&D Marine Products Co., Ltd	1.48
S&P Aquarium	1.48
S&P Syndicate Public Company Ltd	*
S. Chaivaree Cold Storage Co., Ltd	1.48
S. Khonkaen Food Industry Public Co., Ltd. and/or S. Khonkaen Food Ind Public	1.48
Samui Foods Company Limited	1.48
SCT Co., Ltd	1.48
Sea Bonanza Food Co., Ltd	1.48
SEA NT'L CO., LTD	1.48
Seafoods Enterprise Co., Ltd	1.48
Seafresh Fisheries/Seafresh Industry Public Co., Ltd	1.48
Search & Serve	1.48
Shianlin Bangkok Co., Ltd	1.48
Shing Fu Seaproducts Development Co	1.48
Siam Food Supply Co., Ltd	1.48
Siam Intersea Co., Ltd	1.48
Siam Marine Products Co. Ltd	1.48
Siam Ocean Frozen Foods Co. Ltd	1.48
Siamchai International Food Co., Ltd	*
Smile Heart Foods Co. Ltd	1.48
SMP Products, Co., Ltd[28]	1.48
Southport Seafood Co., Ltd	1.48
Star Frozen Foods Co., Ltd	1.48
Starfoods Industries Co., Ltd	1.48
Suntechthai Intertrading Co., Ltd	1.48
Surapon Nichirei Foods Co., Ltd	1.48
Surapon Foods Public Co., Ltd[29]/Surat Seafoods Co., Ltd.	1.48
Suratthani Marine Products Co., Ltd	1.48
Suree Interfoods Co., Ltd	1.48
T.S.F. Seafood Co., Ltd	1.48
Tanaya International Co., Ltd	1.48
Tanaya Intl	1.48
Tep Kinsho Foods Co., Ltd	1.48
Teppitak Seafood Co., Ltd	1.48
Tey Seng Cold Storage Co., Ltd	1.48
Thai Agri Foods Public Co., Ltd	1.48
Thai Mahachai Seafood Products Co., Ltd	1.48
Thai Ocean Venture Co., Ltd	1.48
Thai Patana Frozen	1.48
Thai Prawn Culture Center Co., Ltd	1.48
Thai Spring Fish Co., Ltd	1.48
Thai Union Frozen Products Public Company Ltd./Thai Union Seafood Co., Ltd	1.48
Thai Union Manufacturing Company Limited	*
Thai World Import & Export Co., Ltd[30]	1.48
Thai Yoo Ltd., Part	1.48
The Siam Union Frozen Foods Co., Ltd[31]	1.48
The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd	1.48
Trang Seafood Products Public Co., Ltd	1.48
Transamut Food Co., Ltd	1.48
Tung Lieng Trdg	1.48
United Cold Storage Co., Ltd	1.48
V Thai Food Product	*
Xian-Ning Seafood Co., Ltd	1.48
Yeenin Frozen Foods Co., Ltd	1.48
YHS Singapore Pte	1.48

Manufacturer/exporter	Percent margin
ZAFCO TRDG	1.48

* No shipments or sales subject to this review.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than the later of 30 days after the date of publication of this notice or one week after the issuance of the last verification report for TRF. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Pakfood and TRF reported the entered value for certain of their U.S. sales. We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of these sales. *See* 19 CFR 351.212(b)(1).

Pakfood and TRF did not report the entered value for the remainder of their U.S. sales. We will calculate importer-specific per-unit duty assessment rates for these sales by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. With respect to Pakfood's and TRF's U.S. sales of shrimp with sauce for which no entered value was reported, we will include the total quantity of the merchandise with sauce in the denominator of the calculation of the importer-specific rate because CBP will apply the per-unit duty rate to the total quantity of merchandise entered, including the sauce weight. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the companies which were not selected for individual review, we will calculate an assessment rate based on the simple average of the margins calculated for those companies selected for individual review. In situations where we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we use a simple average when it yields the best proxy of the weighted-average margin as a matter of practice. *See Bearings from France,* 75 FR at 53663.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis.* The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. *See* 751(a)(2)(C) of the Act.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment Policy Notice.* This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.34 percent, the all-others rate made effective by the *Section 129*

Determination.[32] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: February 28, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–5263 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–DS–P

[32] Effective January 16, 2009, there is no longer a cash deposit requirement for certain producers/exporters in accordance with the *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand,* 74 FR 5638 (Jan. 30, 2009) (*Section 129 Determination*).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 31, 2011, the U.S. Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty (''CVD'') order on corrosion-resistant carbon steel flat products (''CORE'') from the Republic of Korea (''Korea'') for the period of review (''POR'') January 1, 2009, through December 31, 2009.[1] We preliminarily found that Hyundai HYSCO Ltd. (HYSCO) received *de minimis* countervailable subsidies during the POR. However, we subsequently issued a *Post Preliminary Analysis Memorandum* and *Post Preliminary Final Results* in which we found that HYSCO received additional countervailable subsidies.[2] We received comments on our *Preliminary Results* from interested parties, and we have made revisions to our calculations. The final results are listed in the section ''Final Results of Review'' below.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Gayle Longest at (202) 482–3338, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** the CVD order on CORE from Korea.[3] On August 31, 2011, the Department published in the **Federal Register** its *Preliminary Results* of the administrative review of this order for the period January 1, 2009, through December 31, 2009.[4] In accordance with 19 CFR 351.213(b), this administrative review covers HYSCO, a producer and exporter of subject merchandise.

In the *Preliminary Results,* we indicated that we would address the Restriction of Special Taxation Act (RSTA) Article 26 program in a post-preliminary decision memorandum, because information concerning this program was submitted by the Government of Korea (GOK) shortly before the *Preliminary Results.*[5] On September 27, 2011, we issued a *Post Preliminary Analysis Memorandum* and *Post Preliminary Results.*[6]

In the *Preliminary Results,* we invited interested parties to submit briefs or request a hearing. On October 11, 2011, the respondent, HYSCO, submitted comments on the *Preliminary Results.* On October 18, 2011, the petitioner, U.S. Steel Corporation, submitted rebuttal comments.

Subsequent to *Preliminary Results,* the Department issued supplemental questionnaires to HYSCO on November 18, 2011 and December 22, 2011. HYSCO submitted timely responses on December 2, 2011 and January 11, 2012. To allow sufficient time to collect and analyze this additional information, and the briefing process, the Department extended the time limit for these final results.[7] We invited interested parties to submit comments on the additional information collected after the *Preliminary Results.* On December 12, 2011 and January 11, 2012, HYSCO submitted comments. On December 19, 2011 and January 17, 2012, U.S. Steel submitted rebuttal comments. HYSCO submitted rebuttal comments on January 20, 2012. The Department did not conduct a hearing in this review because none was requested.

The Department has considered the comments from interested parties, and we have made revisions to our short-term benchmark used to measure the benefit from the KEXIM short-term exporting financing program. Our findings concerning the issue raised by HYSCO and U.S. Steel are addressed in the accompanying Decision Memorandum for the Countervailing Duty Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea (Decision Memorandum), which is dated concurrently with and hereby adopted by this notice. Parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit of the main commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://ia.ita.doc.gov/frn.*

The paper copy and the electronic version of the Decision Memorandum are identical in content.

Scope of Order

Products covered by the order are CORE from Korea. These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with

[1] *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 54209 (August 31, 2011) (''*Preliminary Results*'').

[2] *See 2009 Review of the Countervailing Duty Order on Corrosion-Resistant Carbon Steel Flats Products from Korea: Post Preliminary Analysis Memorandum for Hyundai HYSCO Ltd. (''HYSCO'')* and *Post Preliminary Results of CVD Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea (C–580–818)* dated September 27, 2011.

[3] *See Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea,* 58 FR 43752 (August 17, 1993).

[4] *See Preliminary Results,* 76 FR 54209.

[5] *See Preliminary Results* at 54215.

[6] *See Post Preliminary Analysis Memorandum* and *Post Preliminary Results.*

[7] *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review,* 76 FR 77775 (December 14, 2011).

plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness. The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7210.30.0000, 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.29.0090, 7210.60.0000, 7210.61.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.20.1500, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.30.15.0000, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.39.5000, 7217.90.1000 and 7217.90.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Period of Review

The POR for which we are measuring subsidies is from January 1, 2009, through December 31, 2009.

Final Results of Review

As noted above, the Department received comments concerning the *Preliminary Results.* We find that changes are warranted in these final results. As a result, we have made revisions to our short-term benchmark used to measure the benefit from the short-term export financing program, as explained in our Decision Memorandum. Therefore, in these final results, we find that HYSCO received a net subsidy of 0.46 percent *ad valorem,* which is a *de minimis* rate. *See* 19 CFR 351.106(c)(1).

Listed below are the programs we examined in the review and our findings with respect to each of these programs. For a complete analysis of these programs, see the *Preliminary Results* and the *Post Preliminary Analysis Memorandum.*

I. Programs Determined to Confer Subsidies During the POR
- A. Short-Term Export Financing
- B. R&D Grants and Loans Under the Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials
- C. Restriction of Special Taxation Act (RSTA) Article 26

II. Programs That Provided No Benefits During the POR
- A. Research and Development Grants Under the Industrial Development Act (IDA)
- B. Research and Development Grants Under the Industrial Technology Innovation Promotion Act (ITIPA)
- C. R&D Grants Under the Act on the Promotion of the Development, Use, and Diffusion of New and Renewable Energy
- D. Reduction in Taxes for Operation in Regional and National Industrial Complexes
- E. Overseas Resource Development Program: Loan From Korea Resources Corporation (KORES)
- F. Overseas Resource Development Program: Loan From Korea National Oil Corporation(KNOC)

III. Programs Found Not to Have Been Used During the POR
- A. Reserve for Research and Manpower Development Fund Under RSTA Article 9 (TERCL Article 8)
- B. RSTA Article 11: Tax Credit for Investment in Equipment to Development Technology and Manpower (TERCL Article 10)
- C. Reserve for Export Loss Under TERCL Article 16
- D. Reserve for Overseas Market Development Under TERCL Article 17
- E. Reserve for Export Loss Under TERCL Article 22
- F. Exemption of Corporation Tax on Dividend Income From Overseas Resources Development Investment Under TERCL Article 24
- G. Reserve for Investment (Special Cases of Tax for Balanced Development Among Areas Under TERCL Articles 41–45)
- H. Tax Credits for Specific Investments Under TERCL Article 71
- I. Asset Revaluation Under Article 56(2) of the TERCL
- J. RSTA Article 94: Equipment Investment to Promote Worker's Welfare (TERCL Article 88)
- K. Electricity Discounts Under the Requested Loan Adjustment Program
- L. Electricity Discounts Under the Emergency Load Reductions Program
- M. Export Industry Facility Loans and Specialty Facility Loans
- N. Exemption of VAT on Imports of Anthracite Coal
- O. Short-Term Trade Financing Under the Aggregate Credit Ceiling Loan Program Administered by the Bank of Korea
- P. Industrial Base Fund
- Q. Excessive Duty Drawback
- R. Private Capital Inducement Act Tax Credits for Temporary Investments Under TERCL Article 27
- S. Scrap Reserve Fund
- T. Short-Term Document Acceptance (D/A) Financing Provided Under KEXIM's Trade Rediscount Program
- U. Special Depreciation of Assets on Foreign Exchange Earnings
- V. Export Insurance Rates Provided by the Korean Export Insurance Corporation
- W. Loans From the National Agricultural Cooperation Federation
- X. Tax Incentives From Highly Advanced Technology Businesses Under the Foreign Investment and Foreign Capital Inducement Act
- Y. Other Subsidies Related to Operations at Asan Bay: Provision of Land and Exemption of Port Fees Under the Harbor Act
- Z. D/A Loans Issued by the Korean Development Bank and Other Government-Owned Banks Energy-Servings Facilities Investment Reserve Funds Under TERCL Article 29
- AA. R&D Grants Under the Promotion of Industrial Technology Innovation Act
- AB. Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program

Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise by HYSCO entered, or withdrawn from warehouse, for consumption on or after January 1, 2009, through December 31, 2009, without regard to countervailing duties. We will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise by HYSCO entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review.

For all non-reviewed companies, the Department has instructed CBP to assess countervailing duties at the cash deposit rates in effect at the time of entry, for entries between January 1, 2009, and December 31, 2009. The cash deposit rates for all companies not covered by this review are not changed by the results of this review, and remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply

with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: February 27, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–5188 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA986

Intent To Prepare an Environmental Impact Statement for NOAA Restoration Center Programmatic Coastal Habitat Restoration Activities

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

ACTION: Announcement of public scoping; request for comments.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 and in compliance with the implementing regulations issued by the Council on Environmental Quality and procedures issued by NOAA Administrative Order 216–6, NOAA is providing notice of its intent to develop a Programmatic Environmental Impact Statement (PEIS) to evaluate the potential environmental impacts of different ranges of coastal and marine habitat restoration project types conducted and supported by the NOAA Restoration Center.

DATES: Interested parties should provide written comments by May 31, 2012.

ADDRESSES: Interested parties that wish to send questions, comments or requests for information may send an email to the following address: *rc.compliance@noaa.gov.*

Interested parties that wish to send questions, comments or requests for information through regular mail may use the following mailing address: NOAA Restoration Center (F/HC3), ATTN: Restoration PEIS Scoping, 1315 East West Highway, Silver Spring, MD 20910.

The NOAA Restoration Center Web site that contains information and updates relevant to this PEIS can be found at: *http://www.restoration.noaa.gov/environmentalcompliance*

FOR FURTHER INFORMATION CONTACT: Tom Barry at 301–427–8653 or via the following email address: *rc.compliance@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NOAA Restoration Center is the only office within NOAA solely devoted to restoring the nation's coastal, marine, and migratory fish habitat. Recognizing that the most successful environmental restoration projects are supported and implemented at the community-level, the Restoration Center creates and builds partnerships on local, regional and national scales to carry out habitat restoration projects within the coastal United States, Great Lakes region, and territories. Restoration projects use a number of priority habitat restoration approaches to positively impact fishery production. Most notably these approaches include, but are not limited to, opening rivers, reconnecting coastal wetlands, restoring corals, rebuilding shellfish populations, land and easement acquisition, erosion reduction, public outreach, restoration research, or a combination of these project types. The Restoration Center provides financial and technical assistance for implementing habitat restoration projects to partners primarily on a competitive basis through a number of programs and funding opportunities administered by the Restoration Center. These include the Community-based Restoration Program (CRP), the Damage Assessment, Remediation and Restoration Program (DARRP), the Coastal Wetland Planning, Protection and Restoration Act (CWPPRA) Program, and the Great Lakes Habitat Restoration Program (GLHRP).

In 2002 the NOAA Restoration Center released the ''NOAA Fisheries' Implementation Plan for the Community-based Restoration Program'' to document environmental compliance processes and procedures for the CRP. In 2006, the NOAA Restoration Center released a Supplemental Programmatic Environmental Assessment (SPEA) to update and further refine the environmental impact evaluation process for the CRP. Since that time, the Restoration Center has increased the scope and scale of the individual projects implemented by the CRP, as well as other Restoration Center programs. Therefore, the environmental impact analysis process under NEPA that uses the 2002 implementation plan and 2006 SPEA needs to be revised.

Accordingly, NOAA is providing notice of its intent to develop a PEIS to evaluate the potential environmental impacts of proposed coastal and marine habitat restoration activities that the NOAA Restoration Center may conduct and support through its funding programs and restoration partners. These activities include: (1) Technical Assistance (includes planning, permitting, monitoring, research and outreach); (2) Riverine/Riparian/Associated Uplands Restoration (includes channel, bank and floodplain, buffer area and watershed revegetation); (3) Inter-tidal Restoration (includes saltmarsh and oyster restoration); (4) Sub-tidal Restoration (includes submerged aquatic vegetation and coral restoration); and (5) Land and Water Acquisition. Possible alternatives NOAA will explore during the scoping process include the following:

- *Alternative 1 (preferred):* NOAA proposes to support a comprehensive range of restoration activities through a wide variety of project types. Under this alternative, the Restoration Center would carry out Activities 1–5 (Technical Assistance, Riverine/Riparian/Associated Uplands Restoration, Sub-tidal Restoration, Inter-tidal Restoration, and Land and Water Acquisition). This alternative enables the Restoration Center to implement its programs and work toward its mission with the greatest efficiency and impact.
- *Alternative 2:* Under this alternative NOAA would support a more limited range of project types, limited to Activities 1–4 (Technical Assistance, Riverine/Riparian/Associated Uplands Restoration, Sub-tidal Restoration, and Inter-tidal Restoration). This alternative, while not preferred, enables the Restoration Center to maintain a high level of efficiency and impact in implementing its programs. However, the exclusion of land and easement acquisition would steer program priorities toward on-the-ground restoration activities and technical support.
- *Alternative 3:* Under this alternative NOAA would support a very limited range of project types, limited to Activity 1 (Technical Assistance). This alternative, while not preferred, enables the Restoration Center to support restoration activities conducted by partners.

The publication date of this notice constitutes the start of the public scoping process under NEPA for the PEIS. Through public comment, the scoping process will help identify and determine the environmental issues that the PEIS will address. This notice provides information on how the public may participate. NOAA encourages all parties with an interest in or who are affected by habitat restoration activities to provide suggestions, comments and input on the alternatives, scope of

analysis and issues relevant to the activities presented in this notice. All interested parties who wish to provide comment may submit written comments to the NOAA Restoration Center electronically or by original hard copy to the address provided above. For more detailed background information, including program descriptions, restoration project types, and the aforementioned environmental assessment documents, please visit the NOAA Restoration Center Web site. NOAA will update the information on the Web site periodically throughout the public scoping process as needed.

Authority

The authority for these actions include the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1891a), and the Fish and Wildlife Coordination Act (16 U.S.C. 661).

Dated: February 28, 2012.

Brian Pawlak,

Acting Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2012–5310 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB057

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene Scoping Meetings on a proposed generic amendment addressing dealer permits and electronic logbook reporting, as well as two amendments to the Coastal Migratory Pelagics Fishery Management Plan (CMP FMP): one that addresses sale of bag limit caught fish and permit requirements and the other that addresses boundaries and transit provisions.

DATES: The scoping meetings will be held from March 19, 2012 through April 3, 2012 at nine locations throughout the Gulf of Mexico. The scoping meetings will begin at 6 p.m. and will conclude no later than 9 p.m. For specific dates, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The scoping meetings will be held in the following locations: Destin, Key West and Fort Myers, FL; Kenner and Grand Isle, LA; Biloxi, MS; Mobile, AL; Galveston and Port Aransas, TX.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director/Senior Fishery Biologist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council has scheduled Scoping Meetings on a proposed generic amendment that would consider changes to the current requirements for dealer permits and the potential for electronic reporting requirements. A potential Amendment 19 to the CMP FMP would consider limits or prohibition on sale of bag limit caught king and Spanish mackerel, as well as cobia. It also considers potential changes to regulations regarding maintaining and renewing commercial fishing permits and adding a commercial permit requirement to sell cobia. A potential Amendment 20 to the CMP FMP would consider potential changes to the existing commercial boundaries and zones along with their associated quotas and trip limits along with possible allowance for transit through closed fishing zones.

The nine scoping meetings will begin at 6 p.m. and conclude at the end of public testimony or no later than 9 p.m. at the following locations:

Monday, March 19, 2012, Hilton Galveston, 5400 Seawall Boulevard, Galveston Island, TX 77551; telephone: (409) 744–5000.

Tuesday, March 20, 2012, Four Points by Sheraton, 940 Beach Boulevard, Biloxi, MS 39530–4138; telephone: (228) 546–3100.

Wednesday, March 21, 2012, Plantation Suites & Conference Center, 1909 Highway 361, Port Aransas, TX 78373; telephone: (361) 749–3866; and Courtyard Marriott, 1000 West I–65 Service Road South, Mobile, AL 36609; telephone: (251) 344–5200.

Thursday, March 22, 2012, Courtyard Marriott, 100 Grand Boulevard, Destin, FL 32550; telephone: (850) 650–7411.

Monday, March 26, 2012, Harvey Government Center, 1200 Truman Avenue, Key West, FL 33040; telephone: (305) 295–5000.

Wednesday, March 28, 2012, Hyatt Place, 2600 Champion Ring Road, Fort Myers, Florida 33905; telephone: (239) 418–1844.

Monday, April 2, 2012, Crowne Plaza New Orleans Airport—2829 Williams Boulevard, Kenner, LA 70062; telephone: (504) 467–5611.

Tuesday, April 3, 2012, Wildlife & Fisheries Department Lab, 195 Ludwig Lane, Grand Isle, LA 70358; telephone: (985) 787–2163.

Copies of the scoping documents can be obtained by calling (813) 348–1630 or by visiting the Council's Web site at *www.gulfcouncil.org.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: February 28, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–5182 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB054

Endangered Species; File No. 16598

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Inwater Research Group, Inc. (Responsible Party and Principal Investigator: Michael Bresette), 4160 NE Hyline Drive, Jensen Beach, FL 34957, has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before April 4, 2012.

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. 16598 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

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division:

- By email to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email),
- By facsimile to (301) 713–0376, or
- At the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education 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: Amy Hapeman or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of 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 222–226).

The applicant requests a 5-year permit to continue long-term research on the demographics and movements of green, loggerhead, hawksbill, and Kemp's ridley sea turtles in the Key West National Wildlife Refuge and extend this work to an additional study area, the Big Bend of Florida. The objectives of the research are to: (1) Obtain information on sea turtle abundance, size frequencies, and sex ratios; (2) determine the genetic origin of sea turtle populations in the region; (3) continue to monitor turtle foraging habits; (4) track prevalence of fibropapilomatosis in sea turtles; (5) track green sea turtle movements west of the Marquesas Keys; and (6) identify habitat preferences of hawksbill sea turtles in the Key West National Wildlife Refuge. Up to 160 green, 160 loggerhead, 75 hawksbill, and 66 Kemp's ridley sea turtles would be captured annually for flipper and passive integrated transponder tagging, blood and tissue sampling, morphometrics, photography, and weights. A subset of sea turtles would be lavaged and/or satellite tagged. In addition to captures, researchers would conduct vessel surveys to observe and count sea turtles in the area.

Dated: February 29, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–5309 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB053

Endangered Species; File Nos. 15661, 10027, and 15685

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

ACTION: Issuance of permits and permit modification.

SUMMARY: Notice is hereby given that NMFS has issued two permits and one permit modification to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for scientific research. See **SUPPLEMENTARY INFORMATION** for information regarding permittees.

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

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm. 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On May 11, 2011, notice was published in the **Federal Register** (76 FR 27306) that a request for a scientific research permit to take green and hawksbill sea turtles had been submitted by the Commonwealth of the Northern Mariana Islands (CNMI) Division of Fish and Wildlife, (Arnold Palacios, Responsible Party). On June 15, 2011, notice was published in the **Federal Register** (76 FR 34967) that a request for a scientific research permit modification to take green sea turtles had been submitted by the Center for Biodiversity and Conservation, American Museum of Natural History (AMNH; Responsible Party: Eleanor Sterling, Ph.D.). On June 20, 2011, notice was published in the **Federal Register** (76 FR 35842) that a request for a scientific research permit to take green and hawksbill sea turtles had been submitted by the NMFS Pacific Islands Fisheries Science Center (PIFSC; Samuel Pooley, Ph.D., Responsible Party). The requested permits and permit modification have been issued under the authority of 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 following summarizes each permit.

The CNMI was issued a five-year permit, No. 15661, to conduct research on sea turtles to characterize population structure, size class composition, foraging ecology, and migration patterns for green and hawksbill sea turtles in the Northern Mariana Islands. Authorized research consists of counts and hand captures of sea turtles during vessel surveys. Captured sea turtles may be measured, weighed, flipper tagged, passive integrated transponder (PIT) tagged, temporarily marked, tissue sampled, photographed, and released. A subset of the turtles may be satellite tagged before release and then tracked from the vessel. A small number of sea turtle carcasses, tissues or parts may be opportunistically salvaged each year.

The AMNH was issued a modification to Permit No. 10027–03, originally issued on July 30, 2008 (73 FR 44224). Permit No. 10027–03 authorized the AMNH to study the population biology and connectivity of green and hawksbill sea turtles focusing on distribution and abundance, ecology, health, and threats to sea turtles at the Palmyra Atoll in the Pacific Ocean. This modification, Permit No. 10027–04, increases the number of green sea turtles taken during research and the number of green sea turtles that may be sonic tagged annually. These data will help determine if temporal, stage-specific, or sex-specific movement patterns exist for the population of sea turtles at Palmyra. The modified permit expires on July 31, 2013.

The PIFSC was issued a five-year permit, No. 15685, to continue long-term monitoring of green and hawksbill sea turtles in the Hawaiian Islands to determine growth rates, health status, stock and population structure, foraging ecology, habitat use, and movements. Researchers may capture, measure, flipper and PIT tag, weigh, biologically sample (tissue, blood, scute, and lavage), and attach transmitters to green and hawksbill sea turtles before release.

Issuance of the permits, as required by the ESA, was based on a finding that such permits (1) were applied for in

good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 28, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–5307 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 120214135–2135–01]

RIN 0660–XA27

Multistakeholder Process To Develop Consumer Data Privacy Codes of Conduct

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Request for public comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is requesting comment on substantive consumer data privacy issues that warrant the development of legally enforceable codes of conduct, as well as procedures to foster the development of these codes. NTIA invites public comment on these issues from all stakeholders with an interest in consumer data privacy, including the commercial, academic and civil society sectors, and from federal and state enforcement agencies.

DATES: Comments are due on or before 5 p.m. Eastern Daylight Savings Time on March 26, 2012.

ADDRESSES: Written comments may be submitted by email to *privacyrfc2012@ntia.doc.gov*. Comments submitted by email should be machine-searchable and should not be copy-protected. Written comments also may be submitted by mail to 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number, on each page of their submissions. All comments received are a part of the public record and will generally be posted to *http://www.ntia.doc.gov/category/internet-policy-task-force* 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. NTIA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Aaron Burstein, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; telephone (202) 482–1055; email aburstein@ntia.doc.gov. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background

The Executive Office of the President released *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (the ''Privacy and Innovation Blueprint'') on February 23, 2012. Two central elements of the Privacy and Innovation Blueprint are: (1) A Consumer Privacy Bill of Rights, which is a set of principles the Administration believes should govern the handling of personal data in commercial sectors that are not subject to existing Federal privacy statutes; and (2) a multistakeholder process, which NTIA will convene, to develop legally enforceable codes of conduct that specify how the Consumer Privacy Bill of Rights applies in specific business contexts.

These discussions will be open to participation by all interested stakeholders, transparent, and consensus-driven.[1] Open participation is necessary to ensure that codes of conduct reflect input from the broad array of stakeholders that have interests in putting the Consumer Privacy Bill of Rights into practice. Any person or organization may choose to participate, no one is under an obligation to participate once discussions have started, and NTIA anticipates that there will be opportunities to join a process once it is underway. Transparency is necessary to allow those who do not participate in the process to understand how participants reached their decisions. Consensus of a broad set of stakeholders, achieved through a transparent process, will lend legitimacy to the code of conduct. At the same time, consensus will encourage companies to adopt codes of conduct; the decision to adopt a code of conduct is voluntary, and companies are unlikely to adopt a code about which they have serious reservations.[2]

The privacy multistakeholder process is voluntary. A code of conduct will not be binding on a company unless and until that company affirmatively commits to follow it. NTIA expects that a company's public commitment to follow a code of conduct will be legally enforceable, provided the company is subject to the Federal Trade Commission's jurisdiction.[3] Enforceable codes of conduct based on the principles set forth in the Consumer Privacy Bill of Rights will provide consumers clear, understandable baseline protections and give businesses greater certainty about how agreed upon privacy principles apply to them. Companies will build consumer trust by engaging directly with consumers and other stakeholders during the process and adopting a code of conduct that stakeholders develop through this process.[4] Moreover, in any enforcement action based on conduct covered by a code, the FTC would likely consider a company's adherence to such a code favorably.[5]

NTIA's role in the privacy multistakeholder process will be to provide a forum for discussion and consensus-building among stakeholders. In situations in which stakeholders disagree over how best to interpret the Consumer Privacy Bill of Rights, NTIA's role, as explained in the Privacy and Innovation Blueprint, ''will be to help the parties reach clarity on what their positions are and whether there are options for compromise toward consensus, rather than substituting its own judgment.'' [6] Furthermore, stakeholder groups convened to develop codes of conduct will not be advisory committees, as neither NTIA nor any other Federal agency or office will seek consensus advice or recommendations

[1] Privacy and Innovation Blueprint at 2, *available at http://www.whitehouse.gov/sites/default/files/privacy-final.pdf* (proposing a privacy multistakeholder process that consists of ''open, transparent forums in which stakeholders who share an interest in specific markets or business contexts will work toward consensus on appropriate, legally enforceable codes of conduct''); *id.* at 23–25, 37 (discussing importance of consensus in multistakeholder processes that develop Internet policy and standards).

[2] *See* Privacy and Innovation Blueprint at 23–24, 37 (discussing importance of consensus in multistakeholder processes).

[3] Currently, the Federal Trade Commission (FTC) brings cases based on violations of a company's public commitments in its privacy statements under the FTC's authority to prevent deceptive acts or practices. *See* 15 U.S.C. 45. A code of conduct developed through a multistakeholder process likely would be enforceable under this authority.

[4] Privacy and Innovation Blueprint at 24.

[5] *Id.*

[6] *Id.* at 27.

on policy issues from participants in these privacy multistakeholder processes.[7]

Request for Comment

Consumer Data Privacy Issues To Address Through Enforceable Codes of Conduct

NTIA plans to facilitate the development of enforceable codes of conduct that implement the full Consumer Privacy Bill of Rights. Initially, NTIA seeks to conduct a privacy multistakeholder process focused on a definable area where consumers and businesses will receive the greatest benefit in a reasonable timeframe. Areas of consumer data privacy in which stakeholders have begun to collaborate to develop practices, or to develop consensus around specific practices, could provide such a starting point. For example, commenters on the Department of Commerce's ''Privacy and Innovation Green Paper'' [8] were in broad agreement that transparency is a key element of protecting consumers' privacy. An initial privacy multistakeholder process could focus on the Privacy and Innovation Blueprint's call to give consumers ''easily understandable and accessible information about privacy and security practices'' in a particular business setting.[9] Future iterations of the process could build on this initial work toward a comprehensive, enforceable code of conduct for that setting.

To identify potential consumer data privacy topics that would benefit from a multistakeholder process as well as risks and concerns, NTIA seeks comment from stakeholders.

1. NTIA seeks comment on what issues should be addressed through the privacy multistakeholder process. Among a variety of alternatives, NTIA is considering convening an initial multistakeholder process to facilitate the implementation of the Transparency principle in the privacy notices for mobile device applications (''mobile apps''). Mobile apps are gaining in social and economic importance.[10] However, as several commenters on the Privacy and Innovation Green Paper noted, mobile devices pose distinct consumer data privacy issues, such as disclosing relevant information about personal data practices on a small display.[11] Moreover, practices surrounding the disclosure of consumer data privacy practices do not appear to have kept pace with these rapid developments in technology and business models. Recent studies found that 33 percent of the top 10 paid mobile apps for three major mobile phone operating systems (thus, a total of 30 paid apps were studied), and 66 percent of the top 10 free mobile apps for the same operating systems, have privacy policies,[12] while a broader study found that only 19 percent of free mobile apps have a link to a privacy policy.[13] With respect to apps directed at children, a recent FTC report found that parents generally cannot determine which app poses privacy risks to their children before downloading an app.[14] A common set of practices that implement the Transparency principle in the Consumer Privacy Bill of Rights could provide guidance to mobile apps developers, operating systems, and apps stores, as well as better inform consumers about how mobile apps use personal data. An NTIA-convened effort toward this end could build on initial efforts to develop codes of conduct and best practices for mobile apps and devices [15] and complement recent commitments by mobile device platform providers to promote transparency in the mobile arena.[16]

NTIA seeks comment on other potential topics, including:

- Other issues associated with mobile apps in general (*e.g.,* a code of conduct that implements the full Consumer Privacy Bill of Rights)
- Mobile apps that provide location-based services
- Cloud computing services, i.e., those that store data in architectures that provide on-demand self-service, broad network access, resource pooling, rapid elasticity, and measured

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[7] *See id.* at 24 (stating that ''the stakeholders themselves will control the process and its results'' and ''[t]here is no Federal regulation at the end of the process''). Because participants will not provide ''advice or recommendations'' as a group to the Federal Government, the multistakeholder processes discussed here should not be subject to the Federal Advisory Committee Act, 5. U.S.C. App. 2. *See id.* § 3(2) (defining ''advisory committee'' to include the establishment or utilization of a group ''in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government,'' subject to certain exceptions).

[8] Department of Commerce, *Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework,* Dec. 16, 2010, *http://www.ntia.doc.gov/reports/2010/IPTF_Privacy_GreenPaper_12162010.pdf.*

[9] The full statement of the Transparency principle in the Consumer Privacy Bill of Rights is as follows:

Transparency: Consumers have a right to easily understandable and accessible information about privacy and security practices. At times and in places that are most useful to enabling consumers to gain a meaningful understanding of privacy risks and the ability to exercise Individual Control, companies should provide clear descriptions of what personal data they collect, why they need the data, how they will use it, when they will delete the data or de-identify it from consumers, and whether and for what purposes they may share personal data with third parties.

Privacy and Innovation Blueprint at 14.

[10] A recent report that summarizes current app economy data is Gartner, Inc., Gartner Says Worldwide Mobile Application Store Revenue Forecast to Surpass $15 Billion in 2011, Jan. 26, 2011, *http://www.gartner.com/it/page.jsp?id=1529214;* Il-Horn Hann, Siva Viswanathan, and Byungwan Koh, The Facebook App Economy, Sept. 19, 2011, *http://www.rhsmith.umd.edu/digits/pdfs_docs/research/2011/AppEconomyImpact091911.pdf* (estimating that ''employment impact of developers building apps on the Facebook Platform in the United States in 2011 is 182,744 full time jobs'' and ''the total employment value of Facebook's app economy is $12.19 billion'').

[11] *See, e.g.,* Ann Cavoukian, Ph.D., Comment on the Privacy and Innovation Green Paper, at 5, Jan. 27, 2011; Center for Democracy & Technology Comment on the Privacy and Innovation Green Paper, at 10, Jan. 28, 2011; CTIA—The Wireless Association Comment on the Privacy and Innovation Green Paper, at 4, Jan. 28, 2011; TRUSTe Comment on the Privacy and Innovation Green Paper, at 8, Jan. 28, 2011.

[12] *See* Future of Privacy Forum, FPF Survey: Free Mobile Apps Better than Paid on Privacy Policies, Dec. 19, 2011, *http://www.futureofprivacy.org/2011/12/19/fpf-survey-finds-free-mobile-apps-better-than-paid-on-privacy-policies/(reporting* on a study of paid apps conducted in May 2011 and a study of free apps conducted in December 2011).

[13] TRUSTe, More Consumers Say Privacy—Over Security—is Biggest Concern When Using Mobile Applications on Smartphones, Apr. 27, 2011 (reporting results of survey of top 340 free mobile apps conducted jointly with Harris Interactive), *http://www.truste.com/blog/2011/04/27/survey-results-are-in-consumers-say-privacy-is-a-bigger-concern-than-security-on-smartphones/.*

[14] *See, e.g.,* FTC, *Mobile Apps for Kids: Current Privacy Disclosures are Disappointing* (staff report), at 17, *available at http://www.ftc.gov/os/2012/02/120216mobile_apps_kids.pdf.*

[15] *See, e.g.,* CTIA, Best Practices and Guidelines for Location Based Services, *available at http://www.ctia.org/business_resources/wic/index.cfm/AID/11300* (last visited Jan. 18, 2012); Future of Privacy Forum and Center for Democracy & Technology, Best Practices for Mobile Applications Developers, available at *http://www.futureofprivacy.org/wp-content/uploads/Apps-Best-Practices-v-beta.pdf* (last visited Jan. 18, 2012); GSMA, Mobile and Privacy: Privacy Design Guidelines for Mobile Application Development, Feb. 2012, available at *http://www.gsma.com/go/download/?file=gsmaprivacydesignguidelinesformobileapplicationdevelopmentv1.pdf;* Mobile Marketing Association, Global Code of Conduct, July 15, 2008, *available at http://mmaglobal.com/codeofconduct.pdf;* PrivacyChoice, Mobile Policymaker, *http://privacychoice.org/resources/policymaker* (last visited Jan. 18, 2012). In addition, the Federal Trade Commission (FTC) has called for stakeholders to ''identify the best means and place for conveying data practices in plain language and in easily accessible ways on the small screens of mobile devices.'' FTC, *Mobile Apps for Kids: Current Privacy Disclosures are Disappointing, supra* note 14, at 3. *See also* FTC, FTC Seeks Input to Revising its Guidance to Business About Disclosures in Online, May 26, 2011, *available at http://www.ftc.gov/opa/2011/05/dotcom.shtm.*

[16] *See* California Office of the Attorney General *et al.,* Joint Statement of Principles, Feb. 22, 2012, *http://ag.ca.gov/cms_attachments/press/pdfs/n2630_signed_agreement.pdf.*

service;[17] or specific cloud computing market segments

- Accountability mechanisms (to enable companies to demonstrate how they are implementing the Consumer Privacy Bill of Rights)
- Online services directed toward teenagers (individuals 13 or older and younger than 18)
- Online services directed toward children (individuals under 13 years old)[18]
- Trusted identity systems, such as those discussed in the *National Strategy for Trusted Identities in Cyberspace*[19]
- The use of multiple technologies, e.g., browser cookies, local shared objects, and browser cache, to collect personal data

This list is not exhaustive, and NTIA welcomes comments on any of these topics as well as descriptions of other topics that commenters would like NTIA to consider for the privacy multistakeholder process.

2. Please comment on what factors should be considered in selecting issues for the privacy multistakeholder process.

Implementing the Multistakeholder Process

Commenters also may wish to provide their views on how stakeholder discussions of the proposed issue(s) should be structured to ensure openness, transparency, and consensus-building. Analogies to other Internet-related multistakeholder processes, whether they are concerned with policy or technical issues, could be especially valuable.[20] Possible subjects for comment include:

Open Participation

The Privacy and Innovation Blueprint calls for a code of conduct development process that is open to any interested participant. A broad array of perspectives and expertise will be necessary to ensure that the privacy multistakeholder process thoroughly addresses the issues before it. NTIA, as convener of the privacy multistakeholder process, will not set criteria that prospective participants must meet, such as their ability to represent specific industries or consumer interests. Nonetheless, there may be practical obstacles to such broad participation. For example, the time required to participate and the expense of attending in-person meetings may make it difficult for some stakeholders to participate. The following questions seek input on how NTIA can keep these barriers to a minimum and ensure that the privacy multistakeholder process is open, as a practical matter, to all interested stakeholders.

3. How can NTIA promote participation by a broad range of stakeholders, i.e., from industry, civil society, academia, law enforcement agencies, and international partners?

4. Which stakeholders should participate? What kinds of expertise or perspectives should participants have?

5. How can NTIA best ensure the process is inclusive, given that participants will likely have different levels of resources available to support their participation?

6. Are pre-requisites for participating in the privacy multistakeholder process consistent with the principle of openness? For example, what impact would a requirement to submit a brief position paper in advance of a stakeholder meeting have on participation?

7. What balance should NTIA seek to achieve between in-person and virtual meetings?

Transparency

Providing timely, relevant information in an accessible manner is crucial to effective transparency.[21] Transparency, in turn, will enable all stakeholders to understand how decisions within the privacy multistakeholder process are reached, whether they participate in the process or not.

8. Which technologies could facilitate discussions among stakeholders before, during, and after in-person meetings?

9. How should discussions during meetings be memorialized and published? Are verbatim transcripts or full recordings necessary, or would a more abbreviated record be appropriate?

10. How can NTIA facilitate broad public review of codes of conduct during their development?

11. What procedures should stakeholders follow to explain their decisions on issues discussed within the privacy multistakeholder process?

12. What procedures should stakeholders follow to explain decisions they reach in concert with other stakeholders?

Building Consensus

Ideally, stakeholders who decide to help develop an enforceable code of conduct will do so with a ''willingness to work in good faith toward reaching consensus on the code's provisions.''[22] Consensus, however, does not have a single definition. The obstacles to consensus are also likely to vary, based in part on how consensus is defined. NTIA seeks comments on how other multistakeholder processes in the Internet policy and standards realms have defined and reached (or failed to reach) consensus.

13. Are there lessons from existing consensus-based, multistakeholder processes in the realms of Internet policy or technical standard-setting that could be applied to the privacy multistakeholder process? If so, what are they? How do they apply?

14. How did those groups define consensus? What factors were important in bringing such groups to consensus?

15. Are there multistakeholder efforts that have failed to achieve consensus? Why did these efforts fail to reach consensus? What policies or standards, if any, resulted from these efforts?

16. In what ways could NTIA encourage stakeholders to reach consensus? Under what circumstances should NTIA facilitate discussions among sub-groups of stakeholders to help them reach consensus? In these cases, what measures would be necessary to keep the overall process transparent?

Response to this Request for Public Comments is voluntary. Commenters are free to address any or all of the issues identified above, as well as provide

[17] *See* Peter Mell and Tim Gance, The NIST Definition of Cloud Computing, version 15, Oct. 7, 2009, *http://csrc.nist.gov/groups/SNS/cloud-computing/cloud-def-v15.doc* (characterizing cloud computing with these five characteristics).

[18] A privacy multistakeholder process could extend protections required of online services directed toward children under 13 years old under the Children's Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. 6501–6506. The FTC's COPPA Rule can be found at 16 CFR Part 312.

[19] Executive Office of the President, *National Strategy for Trusted Identities in Cyberspace: Enhancing Online Choice, Efficiency, Security, and Privacy,* Apr. 2011, *http://www.whitehouse.gov/sites/default/files/rss_viewer/NSTICstrategy_041511.pdf.*

[20] Potentially relevant examples mentioned in the Privacy and Innovation Blueprint include the Internet Corporation for Assigned Names and Numbers (ICANN), the Internet Engineering Task Force (IETF), and the World Wide Web Consortium (W3C). Privacy and Innovation Blueprint at 25. The Internet Governance Forum (IGF) is another potentially relevant multistakeholder forum for Internet policy development. *See* Internet Governance Forum, The Internet Governance Forum, *http://www.intgovforum.org/cms/* (last visited Feb. 3, 2012). NTIA welcomes discussion of these and any other examples of multistakeholder policy development processes that commenters believe are relevant to developing privacy-related codes of conduct.

[21] *See* Memorandum for the Heads of Executive Departments and Agencies, Open Government Directive, Dec. 8, 2009, *available at http://www.whitehouse.gov/open/documents/open-government-directive;* Memorandum for the Heads of Executive Departments and Agencies, ''Transparency and Open Government,'' Jan. 21, 2009, *available at http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/.*

[22] Privacy and Innovation Blueprint at 26.

information on other topics that they think are relevant to developing policies consistent with open, transparent, voluntary, consensus-based processes for developing consumer data privacy codes of conduct. Please note that the Government will not pay for response preparation or for the use of any information contained in the response.

Dated: February 29, 2012.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2012–5220 Filed 3–2–12; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments (if any).

DATES: Comments must be submitted on or before April 4, 2012.

ADDRESSES: Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses below. Please refer to OMB Control No. 3038–0021 in any correspondence.

Martin B. White, Office of the General Counsel, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street Washington, DC 20503.

Comments may also be submitted by any of the following methods:

The agency's Web site, at *http://comments.cftc.gov*. Follow the instructions for submitting comments through the Web site.

Mail: David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

Hand Delivery/Courier: Same as mail above.

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

Please submit your comments using only one method and identity that it is for the renewal of 3038–0021.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations. See 17 CFR 145.9.

FOR FURTHER INFORMATION CONTACT: Martin B. White, Office of the General Counsel, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418–5129; Fax: (202) 418–5567; email: *mwhite@cftc.gov* and refer to OMB Control No. 3038–0021.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Bankruptcies of Commodity Brokers (OMB Control No. 3038–0021). This is a request for extension of a currently approved information collection.

Abstract: This collection of information involves recordkeeping and notice requirements in the CFTC's bankruptcy rules for commodity broker liquidations, 17 CFR Part 190. These requirements are intended to facilitate the effective, efficient, and fair conduct of liquidation proceedings for commodity brokers and to protect the interests of customers in these proceedings.

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 CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 29, 2012 (73 FR 81916).

Burden statement: Commodity broker liquidations occur at unpredictable and irregular intervals; for purposes of estimating information collection burden this notice assumes an average of one commodity broker liquidation every three years. The CFTC further notes that the information collection burden will vary in particular commodity broker liquidations depending on the size of the commodity broker, the extent to which accounts are able to be quickly transferred, and other factors specific to the circumstances of the liquidation. The Commission estimates the average burden of this collection of information as follows:

Rule 190.02(a)(1)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 2.
Estimated Hours per Response: .5.
Estimated Total Hours per Year: .33.

Rule 190.02(a)(2)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 1.
Estimated Hours per Response: 2.
Estimated Total Hours per Year: .67.

Rule 190.02(b)(1)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 4.
Estimated Hours per Response: 1.
Estimated Total Hours per Year: 1.32.

Rule 190.02(b)(2)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 10,000.
Estimated Hours per Response: .1.
Estimated Total Hours per Year: 330.

Rule 190.02(b)(3)

Estimated Respondents or Recordkeepers per Year: .05 (rarely if ever occurs).
Estimated Reports Annually per Respondent or Recordkeeper: 10,000.
Estimated Hours per Response: .2.
Estimated Total Hours per Year: 100.

Rule 190.02(b)(4)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 10,000.
Estimated Hours per Response: .2.
Estimated Total Hours per Year: 660.

Rule 190.02(c)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 10.
Estimated Hours per Response: 10.
Estimated Total Hours per Year: 33.

Rule 190.03(a)(1)

Estimated Respondents or Recordkeepers per Year: .33.

Estimated Reports Annually per Respondent or Recordkeeper: 20,000.
Estimated Hours per Response: .01.
Estimated Total Hours per Year: 66.

Rule 190.03(a)(2)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 20,000.
Estimated Hours per Response: .02.
Estimated Total Hours per Year: 132.

Rule 190.04(b)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 40,000.
Estimated Hours per Response: .01.
Estimated Total Hours per Year: 132.

Rule 190.06(b)

Estimated Respondents or Recordkeepers per Year: .33.
Estimated Reports Annually per Respondent or Recordkeeper: 1.
Estimated Hours per Response: 1.
Estimated Total Hours per Year: .33.

Rule 190.06(d)

Estimated Respondents or Recordkeepers per Year: 125.
Estimated Reports Annually per Respondent or Recordkeeper: 1000.
Estimated Hours per Response: .05.
Estimated Total Hours per Year: 6250.

Rule 190.10(c)

Estimated Respondents or Recordkeepers per Year: 125.
Estimated Reports Annually per Respondent or Recordkeeper: 1000.
Estimated Hours per Response: .05.
Estimated Total Hours per Year: 6250.

There are estimated to be no capital costs or operating and maintenance costs associated with this collection.

Dated February 28, 2012.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–5222 Filed 3–2–12; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Final Environmental Impact Statement for the St. Lucie South Beach and Dune Restoration Project located in St. Lucie County, Florida

AGENCY: U.S. Army Corps of Engineers, DoD.

Cooperating Agency: The Bureau of Ocean Energy, Management, Regulation and Enforcement (BOEMRE) is a cooperating federal agency having jurisdiction by law because the proposed federal action includes potential future use of beach compatible sand originating from the outer continental shelf.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE) is issuing this notice to advise the public that a Final Environmental Impact Statement (FEIS) has been completed and is available for review and comment.

DATES: In accordance with the National Environmental Policy Act (NEPA), we have filed the FEIS with the U.S. Environmental Protection Agency (EPA) for publication of their notice of availability in the **Federal Register**. The EPA notice officially starts the 45-day review period for this document. It is the goal of the USACE to have this notice published on the same date as the EPA notice. However, if that does not occur, the date of the EPA notice will determine the closing date for comments on the FEIS. Comments on the FEIS must be submitted to the address below under **FOR FURTHER CONTACT INFORMATION** and must be received no later than 5 p.m. Eastern Standard Time, *Monday, April 16, 2012.*

Scoping: A Scoping Meeting was held in Ft. Pierce, FL on May 19th, 2010 to gather information for the preparation of the Draft Environmental Impact Statement (DEIS). A Public notice was posted in a St. Lucie County newspaper, and mailed to current stakeholder lists with notification of the public meetings requesting input and comments on issues that should be addressed in the DEIS.

DEIS and Public Comment. The Notice of Availability of the DEIS was published June 3 2011, with a comment period ending 5 p.m. July 18, 2011. A public comment meeting was held June 29, 2011 at the St. Lucie County government offices. After receiving public comments, the USACE reviewed all relevant comments and concerns. After the comment period, the DEIS was revised to be the FEIS in order to address the comments and concerns, or to include additional requested information. On January 5, 2012, the applicant revised its preferred alternative to an alternative with fewer adverse environmental effects on nearshore hardbottom.

ADDRESSES: The FEIS is available online on the Jacksonville District Web site at: *http://www.saj.usace.army.mil/Divisions/Regulatory/interest.htm.* Printed copies of the FEIS are also available for public review at the following locations:

1. St. Lucie County Administration Building, 2300 Virginia Ave., Fort Pierce, FL 34982.
2. St. Lucie County Ft. Pierce Branch Library 101 Melody Lane, Fort Pierce, 34950.
3. St. Lucie County Lakewood Park Branch Library 7605 Santa Barbara Drive, Fort Pierce, 34951.
4. St. Lucie West Library J Building, 500 NW. California Blvd., Port St. Lucie, 34986,
5. USACE Palm Beach Gardens Regulatory Office, 4400 PGA Boulevard, Suite 500 Palm Beach Gardens, Florida 33410.

FOR FURTHER INFORMATION CONTACT: Ms. Leah Oberlin, Chief, Palm Beach Gardens Section, U.S. Army Corps of Engineers, Jacksonville District, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, FL 33410, Telephone: 561–472–3517, Fax: 561–626–6971.

SUPPLEMENTARY INFORMATION: The project is being reviewed under Department of the Army permit application number SAJ–2009–03448(IP–GGL). The primary Federal involvement associated with the Proposed Action is the dredging and discharge of fill within navigable waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Proposed Action: The project is located on South Hutchinson Island in St. Lucie County and is approximately 3.4 miles in length. The project coincides approximately with Florida Department of Environmental Protection Shoreline Monuments R–98 to R–115+1,000 ft, the St. Lucie/Martin County line. The northern limit of the project is approximately 16,000 feet south of the Hutchinson Island Nuclear Plant. The project was proposed by the St. Lucie County Erosion District (applicant) to stabilize the beach and dune to protect essential upland infrastructure, upland property, expand turtle nesting habitat, and increase recreational opportunities. The applicant's preference is to utilize a hopper dredge to obtain 485,900 cubic yards of beach compatible sand from a borrow area approximately 3.0 miles offshore of St. Lucie County. The hopper dredge would deliver the sand by hydraulic pumping onto the project beach. The applicant has stated the project was anticipated to adversely affect approximately 1.57 acre of near-shore hard bottom habitat. The impacts include: 0.55 acres of near-shore hard bottom habitat through direct burial,

0.02 acres of impacts associated with temporary pipeline placement, and 1.0 acre of temporary construction-related turbidity impacts. The proposal is for new major construction seeking federal authorization, and the USACE is required to prepare an EIS when significant environmental effects on the human environment are anticipated for compliance with the National Environmental Policy Act (NEPA). The FEIS states the purpose and need for the Proposed Action and the identified reasonable alternatives that may achieve the project purpose. The alternatives include the no-action alternative, and six other alternatives including the applicant's Proposed Action. Each of the alternatives identified in the FEIS include varying degrees of hardbottom impacts associated with beach and/or dune fill with and without stabilizing structures (T-head groins). The EIS process also provides opportunity for stakeholder involvement in order for the USACE to render an informed final decision on the applicant's proposal. The USACE's decision will be to authorize, modify, or deny the applicant's Proposed Action.

Donald W. Kinard,

Chief, Regulatory Division, Jacksonville District.

[FR Doc. 2012–5253 Filed 3–2–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education (ED).

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 9, 2012. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 4, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* 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 the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

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 respondents, including through the use of information technology.

Dated: February 29, 2012.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Federal Family Education Loan (FFEL) Program London Inter-Bank Offered Rate (LIBOR) Waiver.

OMB #: Pending.

Abstract: The Consolidated Appropriations Act, 2012 requires that Federal Family Education Loan program Lenders be given the option to have their special allowance payments calculated using the 1-month London Inter-Bank Offered Rate (LIBOR). Lenders electing to have loans calculated using LIBOR will be required to sign a waiver. This waiver has to be signed no later than April 1, 2012.

Additional Information: The Office of the Chief Financial Officer, Federal Student Aid requests Emergency Clearance for the information collection entitled ''Federal Family Education Loan Program London Inter-Bank Offered Rate (LIBOR) Waiver'' because a normal clearance is likely to cause a statutory deadline to be missed. On December 23, 2011, the President signed the Consolidated Appropriations Act, 2012 (Pub. L. 112–74), which directs that FFEL lenders be given the option of having their special allowance payments calculated using the one-month LIBOR for the calendar quarter beginning April 1, 2012 and each subsequent quarter. Public Law 112–74 further directs that each lender electing the change must submit a waiver attesting to that choice no later than April 1, 2012.

Reporting and Recordkeeping Hour Burden:

Responses: 75.

Burden Hours: 3,000.

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 04806. 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 the Internet address *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.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* 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. 2012–5281 Filed 3–2–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, March 26, 2012; 1 p.m.–5 p.m. Tuesday, March 27, 2012; 8:30 a.m.–4:30 p.m.

ADDRESSES: The Marriot Columbia, 1200 Hampton Street, Columbia, SC 29201.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, March 26, 2012

1 p.m.—Combined Committees Session.
5 p.m.—Adjourn.

Tuesday, March 27, 2012

8:30 a.m.—Approval of Minutes, Agency Updates.
Public Comment Session.
Facilities Disposition and Site Remediation Committee Report.
Nuclear Materials Committee Report.
Public Comment Session.
12:30 p.m.—Lunch Break.
1:30 p.m.—Strategic and Legacy Management Committee Report.
Waste Management Committee Report.
Administrative Committee Report.
Public Comment Session.
4:30 p.m.—Adjourn.

Public Participation: The EM SSAB, Savannah River Site, 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 Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on February 29, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–5273 Filed 3–2–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–040]

Decision and Order Amending a Waiver Granted to Fujitsu General America, Inc. From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

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

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–040, which amends the current waiver applicable to Fujitsu's Airstage V–II products to require the use of Air-conditioning, Heating and Refrigeration Institute 1230 (AHRI) as the alternative test procedure.

DATES: This Decision and Order is effective March 5, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 287–6111. Email: *Jennifer.Tiedemanmailto:@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE issues notice of this Decision and Order in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4). In this Decision and Order, DOE amends the current waiver applicable to Fujitsu's Airstage V–II equipment to require the use of AHRI 1230 as the alternative test procedure. Amendment is appropriate in this specific circumstance because DOE has recently issued waivers to other manufacturers using AHRI 1230 as the alternate test procedure for the same types of equipment, and AHRI 1230 is very similar to the alternate test procedure previously prescribed to Fujitsu, but will provide a more conservative estimate of the energy consumed by this equipment. The waiver requires Fujitsu to use AHRI 1230 to test and rate specified models from its Airstage V–II multi-split equipment line.

Today's decision requires Fujitsu to make representations concerning the energy efficiency of this equipment consistent with the provisions and restrictions of the alternate test procedure in the Decision and Order below, and the representations must fairly disclose the test results. (42 U.S.C. 6314(d)) The same standard applies to distributors, retailers, and private labelers when making representations of the energy efficiency of this equipment. *Id.*

Issued in Washington, DC, on February 28, 2012.

Kathleen B. Hogan,

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

Decision and Order

In the Matter of: Fujitsu General America, Inc. (Fujitsu) (Case No. CAC–040).

Background

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317), established the Energy Conservation Program for certain industrial equipment, which includes commercial air conditioning equipment, the focus of this decision and order.[1] Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), if the industry test procedure for commercial package air-conditioning and heating equipment is amended, EPCA directs the Secretary to amend the corresponding DOE test procedure unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of this equipment. For commercial package air-source equipment with capacities between 65,000 and 760,000 Btu/h, ARI Standard 340/360–2004 is the applicable test procedure.

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

DOE's regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment 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 procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect according to the provisions of 10 CFR 431.401(g).

On August 12, 2011, DOE granted Fujitsu a waiver from the DOE commercial air conditioner and heat pump test procedures for Fujitsu's Airstage V–II equipment. 76 FR 50204. On December 19, 2011, Fujitsu requested that DOE amend its order granting a test procedure waiver for these products to allow Fujitsu to test and rate its Airstage V–II equipment according to the American National Standards Institute (ANSI)/Air-conditioning, Heating and Refrigeration Institute (AHRI) Standard 1230–2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment (AHRI 1230). Fujitsu also requested that DOE amend the definition of ''tested combination'' in the current alternate test procedure to allow for the use of up to 12 indoor units in the configuration of a basic model. The alternate test procedure Fujitsu is currently permitted to use specifies a maximum of eight indoor units for testing.

Assertions and Determinations

Fujitsu's Petition for Waiver Amendment

As explained in Fujitsu's waiver for its Airstage V–II equipment, these systems cannot be tested according to the prescribed test procedures for commercial products. Specifically, they contain one or more design characteristic that prevents testing according to the test procedures. According to DOE's grant of the August 2011 waiver, Fujitsu is not required to test or rate the products listed in the waiver based on the current DOE test procedure. Instead, Fujitsu is required to test and rate these products according to the alternate test procedure set forth in the waiver.

The alternate test procedure prescribed in the August 2011 waiver was first prescribed in 2007, in response to two petitions for waiver from Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi). The alternate test procedure was published on April 9, 2007. 72 FR 17528, 72 FR 17533. Since then, DOE has prescribed the same alternate test procedure for other manufacturers of multi-split products.

After DOE granted a waiver to Mitsubishi for its multi-split products, the Air-Conditioning and Refrigeration Institute (ARI) (now AHRI) formed a committee to develop a general testing protocol for VRF systems. The committee developed AHRI 1230, which has been incorporated into ASHRAE 90.1–2010. AHRI 1230 establishes a test procedure for VRF multi-split air conditioners and heat pumps. The test procedure covers matched VRF systems with cooling and heating capacities for outdoor units between 12,000 Btu/h and 300,000 Btu/h. DOE is assessing AHRI 1230 with respect to the requirements EPCA specifies for test procedures, and will make a preliminary determination regarding AHRI 1230 in a future rulemaking.

AHRI 1230 is very similar to the alternate test procedure in the commercial multi-split waivers that DOE previously granted to Fujitsu and other manufacturers, but contains minor differences in the definition of tested combination, the testing of ducted versus non-ducted indoor units, and the line lengths. These differences are discussed below.

First, the definition of ''tested combination'' in AHRI 1230 and the alternate test procedure prescribed by DOE in the earlier multi-split waivers are identical in all relevant respects, except that AHRI 1230 allows the use of up to 12 indoor units, as opposed to eight in the earlier alternate test procedure.

Second, ANSI/AHRI 1230–2010 requires an additional test. The earlier alternate test procedure provides for efficiency rating of a non-tested combination in one of two ways: (1) at an energy efficiency level determined using a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit. In AHRI 1230, similar to the residential test procedure

set forth in 10 CFR part 430, subpart B, appendix M, multi-split manufacturers must also test two or more combinations of indoor units with each outdoor unit. The first system combination is tested using only non-ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all non-ducted indoor units is set equal to the rating of the tested system having all non-ducted indoor units. The second system combination is tested using only ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all ducted indoor units is set equal to the rating of the tested system having all ducted indoor units. The rating given to any untested multi-split system combination having the same outdoor unit and a mix of non-ducted and ducted indoor units is set equal to the average of the ratings for the two required tested combinations.

Third, the alternate test procedure and AHRI 1230 require the use of different line lengths for the cooling refrigerant line when performing efficiency testing. AHRI 1230 requires longer line lengths depending on the type and capacity of the connected indoor units.

As DOE continues to evaluate AHRI 1230, DOE has granted manufacturers' request to use AHRI 1230 as the alternate test procedure for testing and rating their commercial multi-split products subject to a waiver of DOE's test procedures. DOE prescribed AHRI 1230 as the alternate test procedure for those Daikin AC (Americas) Inc. (''Daikin'') commercial multi-split products that have cooling capacities less than or equal to 300,000 Btu/h (76 FR 34685, June 14, 2011), for Carrier Corporation's (''Carrier'') commercial multi-split products (76 FR 31591, June 2, 2011), and for Mitsubishi's commercial multi-split products that have cooling capacities less than or equal to 300,000 Btu/h. (76 FR 65710, Oct. 24, 2011)

Consistent with the requests of these other manufacturers, Fujitsu requested that DOE permit it to use AHRI 1230 as the alternate test procedure to test and rate its Airstage V–II equipment. AHRI 1230 covers multi-split products with cooling and heating capacities for outdoor units from 12,000 Btu/h to 300,000 Btu/h. Fujitsu's Airstage V–II product line includes outdoor units with capacities from 72,000 Btu/h to 288,000 Btu/h. Thus, similar to DOE's decision in the Daikin and Mitsubishi waivers, Fujitsu requested that DOE prescribe AHRI 1230 as the alternate test procedure for its Airstage V–II equipment. DOE has determined that use of AHRI 1230 is appropriate for Fujitsu's Airstage V–II products for the reasons set forth below.

As discussed above, AHRI 1230 requires longer line lengths for the cooling refrigerant line during testing, depending on the type and capacity of the connected indoor units. This difference affects the resulting energy efficiency determination. Testing according to AHRI 1230's requirements provides a more conservative estimate of energy consumption because it results in a slightly lower efficiency rating than testing according to the alternate test procedure.

In addition, the definition of ''tested combination'' in AHRI 1230 is more appropriate for these Fujitsu products than the definition in the current alternate test procedure. As defined in the current alternate test procedures for Fujitsu's products, the ''tested combination'' of a VRF system is defined as one outdoor unit matched with between two and eight indoor units. The indoor units must represent the highest sales model family, and, together, must have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit. Due to the relative size of some of Fujitsu's outdoor units and indoor units, permitting the matching of up to only eight indoor units may not be sufficient to comply with the requirement that the indoor units must have a combined capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit. AHRI 1230, as revised in March 2011, permits the use of up to twelve indoor units. DOE is evaluating AHRI 1230 to determine whether to incorporate it into the applicable test procedure.

For the reasons discussed above, and because DOE's prescribed AHRI 1230 as the alternate test procedure in waivers granted to Carrier, Daikin and Mitsubishi, DOE determined that allowing Fujitsu to use AHRI 1230 instead of the alternate test procedure provided in the August 2011 waiver is in the public interest.

Conclusion

After careful consideration of all the materials submitted by Fujitsu, it is ordered that:

(A) Fujitsu is not required to test the equipment listed in the Airstage V–II waiver granted August 12, 2011 (76 FR 50204) according to the test procedure for commercial package air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96 (ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)-(3)), but instead shall use as the alternate test procedure ANSI/AHRI 1230–2010.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features: The basic model of a variable refrigerant flow system (''VRF system'') used as a tested combination shall consist of an outdoor unit (an outdoor unit can include multiple outdoor units that have been manifolded into a single refrigeration system, with a specific model number) that is matched with between 2 and 12 indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(C) *Representations.* In making representations about the energy efficiency of its Airstage V–II multi-split equipment, for compliance, marketing, or other purposes, Fujitsu must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

(i) For multi-split combinations tested in accordance with this alternate test procedure, Fujitsu may make representations based on those test results.

(ii) For multi-split combinations that are not tested, Fujitsu may make representations based on the testing results for the tested combination and that are consistent with one of the following methods:

(a) Rating of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Rating of non-tested combinations having the same outdoor unit and all non-ducted indoor units shall be set equal to the rating of the tested system having all non-ducted indoor units.

(c) Rating of non-tested combinations having the same outdoor unit and all ducted indoor units shall be set equal to the rating of the tested system having all ducted indoor units. To be considered a ducted unit, the indoor unit must be intended to be connected with ductwork and have a rated external static pressure capability greater than zero (0).

(d) Rating of non-tested combinations having the same outdoor unit and a mix of non-ducted and ducted indoor units shall be set equal to the average of the ratings for the two required tested combinations.

(D) This waiver amendment shall remain in effect from the date this Decision and Order is issued, consistent

with the provisions of 10 CFR 431.401(g).

Issued in Washington, DC, on February 28, 2012.

Kathleen B. Hogan,

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

[FR Doc. 2012–5227 Filed 3–2–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–039]

Notice of Petition for Waiver of Fujitsu General Limited From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedure, and Grant of Interim Waiver

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

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the Fujitsu General Limited (FUJITSU) petition for waiver and application for interim waiver (hereafter, ''petition'') from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of commercial package air-source central air conditioners and heat pumps. Today's notice also grants an interim waiver of the commercial package air-source central air conditioners and heat pumps test procedure. Through this notice, DOE also solicits comments with respect to the FUJITSU petition.

DATES: DOE will accept comments, data, and information with respect to the FUJITSU petition until April 4, 2012.

ADDRESSES: You may submit comments, identified by case number CAC–039, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include ''Case No. CAC–039'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings and waivers regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *mailto:Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). Part C of Title III provides for a similar energy efficiency program titled ''Certain Industrial Equipment,'' which includes commercial package central air conditioners and heat pumps and other types of commercial equipment.[1] (42 U.S.C. 6311–6317).

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), if the industry test procedure for commercial package air-conditioning and heating equipment is amended, EPCA directs the Secretary to amend the corresponding DOE test procedure unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. For commercial package air-source equipment with capacities between 65,000 and 760,000 Btu/h, ARI Standard 340/360–2004 is the applicable test procedure.

The regulations set forth in 10 CFR 431.401 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if 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 431.401(f)(4). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner

[1] For editorial reasons, upon codification in the U.S. Code, Parts B and C were re-designated as Parts A and A–1, respectively.

representative of its energy consumption. 10 CFR 430.401(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 430.401(g).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.401(e)(4).

II. Application for Interim Waiver and Petition for Waiver

On December 16, 2011, FUJITSU submitted a petition for waiver from the DOE test procedure applicable to commercial package air-source and water-source central air conditioners and heat pumps set forth in 10 CFR 431.96. FUJITSU requested the waiver for the FUJITSU AIRSTAGE V–II multi-split heat pump with a capacity of 264,000 Btu/h, and specified compatible indoor units. The applicable test procedure for these heat pumps is ARI 340/360–2004. Manufacturers are directed to use these test procedures pursuant to Table 1 of 10 CFR 431.96.

FUJITSU seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its AIRSTAGE V–II multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, FUJITSU asserts that the two primary factors that prevent testing of its AIRSTAGE V–II multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics America USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. *See, e.g.,* 72 FR 17528 (April 9, 2007) (Mitsubishi); 76 FR 19069 (April 6, 2011) (Daikin); 76 FR 19078 (April 6, 2011) (Mitsubishi); 76 FR 31951 (June 2, 2011) (Carrier); 76 FR 50204 (August 12, 2011) (Fujitsu General Limited); 76 FR 65710 (October 24, 2011) (Mitsubishi).

The AIRSTAGE V–II systems have operational characteristics similar to the commercial multi-split products manufactured by other manufacturers. As indicated above, DOE has already granted waivers for these products. The AIRSTAGE V–II system consists of multiple indoor units connected to an air-cooled outdoor unit. These multi-splits are used in zoned systems where an outdoor or water-source unit can be connected with up to 45 separate indoor units, which need not be the same models. According to FUJITSU, the various indoor and outdoor models can be connected in a multitude of configurations, with many thousands of possible combinations. Consequently, FUJITSU requested that DOE grant a waiver from the applicable test procedures for its AIRSTAGE V–II product designs until a suitable test method can be prescribed.

On December 16, 2011, FUJITSU also submitted an application for an interim waiver from the test procedures at 10 CFR 431.96 for its AIRSTAGE V–II equipment. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.401(e)(3)).

DOE has determined that FUJITSU's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship FUJITSU might experience absent a favorable determination on its application for an interim waiver. DOE has determined, however, that it is likely FUJITSU's petition will be granted, and that it is desirable for public policy reasons to grant FUJITSU relief pending a determination on the petition. DOE believes that it is likely FUJITSU's petition will be granted because, as noted above, DOE has previously granted a number of waivers for similar product designs. The two principal reasons supporting the grant of the previous waivers also apply to FUJITSU's AIRSTAGE V–II products: (1) test laboratories cannot test products with so many indoor units; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. DOE also believes that the energy efficiency of similar products should be tested and rated in the same manner. As a result, DOE grants an interim waiver to FUJITSU for the specified models of its AIRSTAGE V–II products. DOE also provides for the use of an alternative test procedure, ANSI/AHRI–1230–2010 with Addendum 1. Therefore, *it is ordered that:*

The application for interim waiver filed by FUJITSU is hereby granted for FUJITSU's AIRSTAGE V–II multi-split heat pumps, subject to the specifications and conditions below. FUJITSU shall be required to test and rate the specified AIRSTAGE V–II commercial multi-split products according to the alternate test procedure as set forth in section IV, ''Alternate test procedure.''

The interim waiver applies to the following basic model groups:

Add-on system models	(Module models)
AOUA264RLBVG	(AOUA72RLBV + AOUA96RLBV + AOUA96RLBV)

With nominal cooling capacity of 264,000 Btu/h.

Compatible indoor units for the above listed outdoor units:

Compact cassette:
AUUA7RLAV, AUUA9RLAV, AUUA12RLAV, AUUA14RLAV, AUUA18RLAV and AUUA24RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000, 18,000 and 24,000 Btu/hr respectively.

Cassette:
AUUB30RLAV and AUUB36RLAV with nominal cooling capacities of 30,000 and 36,000 Btu/hr respectively.

Slim cassette:
AUUB18RLAV and AUUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively.

Compact wall mounted:
ASUA7RLAV, ASUE7RLAV, ASUA9RLAV, ASUE9RLAV, ASUA12RLAV, ASUE12RLAV, ASUA14RLAV and ASUE14RLAV with nominal cooling capacities of 7,500, 7,500, 9,500, 9,500, 12,000, 12,000, 14,000 and 14,000 Btu/hr respectively.

Wall mounted:
ASUB18RLAV and ASUB24RLAV with nominal cooling capacities of 18,000 and 24,000 Btu/hr respectively.

Floor/Ceiling (Universal):
ABUA12RLAV, ABUA14RLAV, ABUA18RLAV and ABUA24RLAV with nominal cooling capacities of 12,000, 14,000, 18,000, and 24,000 Btu/hr respectively.

Ceiling:
ABUA30RLAV and ABUA36RLAV with nominal cooling capacities of 30,000 and 36,000 Btu/hr respectively.

Slim duct:
ARUL7RLAV, ARUL9RLAV, ARUL12RLAV, ARUL14RLAV and ARUL18RLAV with nominal cooling capacities of 7,500, 9,500, 12,000, 14,000 and 18,000 Btu/hr respectively.

Middle static pressure duct:
ARUM24RLAV, ARUM30RLAV, ARUM36RLAV, ARUM48RLAV and ARUM54RLAV with nominal cooling

capacities of 24,000, 30,000, 36,000, 48,000 and 54,000 Btu/hr respectively.

High static pressure duct:

ARUH36RLAV, ARUH48RLAV, ARUH54RLAV, ARUH60RLAV, ARUH72RLAV, ARUH90RLAV and ARUH96RLAV with nominal cooling capacities of 36,000, 48,000, 60,000, 72,000, 90,000 and 96,000 Btu/hr respectively.

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. FUJITSU may submit a petition for waiver and request for grant of interim waiver, as appropriate, for additional models of commercial package air conditioners and heat pumps for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

III. Alternate Test Procedure

In responses to two petitions for waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. See 72 FR 17528 and 72 FR 17533. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

DOE understands that existing testing facilities have limited ability to test multiple indoor units simultaneously. This limitation makes it impractical for manufacturers to test the large number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems. We further note that after DOE granted a waiver for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss testing issues and to develop a testing protocol for variable refrigerant flow systems. The committee has developed a test procedure that has been adopted by AHRI—''ANSI/AHRI 1230–2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment'' and is referenced in ASHRAE 90.1–2010. ANSI/AHRI 1230–2010 with Addendum 1 (dated February 2011) allows the use of up to 12 indoor units (instead of 5 indoor units previously) in the configuration of a basic model. ANSI/AHRI 1230–2010 is consistent with the alternate test procedure established in the commercial multi-split waivers that DOE has granted to Mitsubishi and several other manufacturers. ANSI/AHRI 1230–2010 uses a definition of ''tested combination'' that is substantially the same as the definition in the alternate test procedure in those waivers. DOE prescribed ANSI/AHRI 1230–2010 in decision and orders granted to Carrier Corporation (76 FR 31951, June 2, 2011), Fujitsu General Limited (76 FR 50204, August 12, 2011), and Mitsubishi (76 FR 65710, October 24, 2011).

Therefore, as a condition for granting this interim waiver to FUJITSU, DOE requires the use of ANSI/AHRI–1230–2010 with Addendum 1 as the alternate test procedure. This alternate test procedure will allow FUJITSU to test and make energy efficiency representations for its AIRSTAGE V–II products. As stated above, DOE has applied this alternate test procedure to other waivers for similar residential and commercial central air conditioners and heat pumps manufactured by other manufacturers.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of FUJITSU's petition for waiver from the test procedures that apply to commercial multi-split heat pump products and grants an interim waiver to FUJITSU. For the reasons articulated above, DOE also grants FUJITSU an interim waiver from those procedures. DOE is publishing FUJITSU's petition for waiver in its entirety pursuant to 10 CFR 430.401(b)(1)(iv). The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that FUJITSU is required to follow as a condition of its interim waiver.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Masami Kato, Manager, Engineering Attestation Administration Department, Air Conditioner Administration Division, FUJITSU General Limited, 1116 Suenaga, Takatsu-ku, Kawasaki 213–8502, Japan. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes). 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 two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on February 28, 2012.

Kathleen B. Hogan,

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

[FR Doc. 2012–5228 Filed 3–2–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–021]

Petition for Waiver of Samsung Electronics America, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

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

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the Samsung Electronics America, Inc. (Samsung) petition for waiver (hereafter, ''petition'') from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. In its petition, Samsung provides an alternate test procedure that is the same as the test procedure DOE published in an interim final rule. DOE solicits comments, data, and information concerning Samsung's petition and the suggested alternate test procedure. Today's notice also grants Samsung an interim waiver from the electric refrigerator and refrigerator-freezer test

procedure, subject to use of the alternative test procedure set forth in this notice.

DATES: DOE will accept comments, data, and information with respect to the Samsung Petition until April 6, 2012.

ADDRESSES: You may submit comments, identified by case number ''RF–021,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. RF–017] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar refrigerator-freezer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for automatic electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if 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(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the 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).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On December 14, 2011, Samsung submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is designing new refrigerator-freezers that incorporate multiple defrost cycles. In its petition, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for multiple defrost cycles. Therefore, Samsung has asked to use an alternate test procedure that is the same as the test procedure provisions for products with long time or variable defrost DOE published in an interim final rule (75 FR 78810, December 16, 2010). On January 27 and July 19, 2011, Samsung had submitted similar petitions for waiver and requests for interim waiver for other basic models of refrigerator-freezers that incorporate multiple defrost cycles. DOE subsequently granted a waiver for the products specified in these petitions. 77 FR 1474 (Jan. 10, 2012).

Samsung also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g)).

DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. DOE has determined, however that it is likely Samsung's petition will be granted, and that it is desirable for public policy reasons to grant Samsung relief pending a determination on the petition. Previously, DOE granted a waiver to Samsung for other basic models incorporating multiple defrost technology (77 FR 1474, Jan. 10, 2012), and DOE has determined that it is desirable to have similar basic models tested in a consistent manner.

Samsung's petition included an alternate test procedure to account for

the energy consumption of its refrigerator-freezer models with multiple defrost cycles. The alternate test procedure specified by Samsung is the same as the test procedure published in the interim final rule referenced above. DOE recently issued a final test procedure for refrigerators, refrigerator-freezers, and freezers (*http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/refr_frz_tp_finalrule_01_09_12.pdf*). The final test procedure addresses comments received on the Samsung petitions that were the subject of the previous waiver, as well as on the interim final rule. The alternate test procedure specified in this interim waiver (as well as the previous waiver granted to Samsung) is identical to the test procedure provisions for products with long time or variable defrost adopted in the final test procedure rule.

For the reasons stated above, DOE grants Samsung's application for interim waiver from testing of its refrigerator-freezer product line containing multiple defrost cycles. Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for the specified Samsung refrigerator-freezer basic models that incorporate multiple defrost cycles, subject to the specifications and conditions below. Samsung shall be required to test or rate the specified refrigerator-freezer products according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic model groups:

PFSS6SMX****
PSB42******
RF323T*DB**
RF263B*AE**
RF263N*AE**
592 656**
GSE4820SS
RF323B*DB**
RF261B*AE**
RF263S*AE**
PSB48******
E42BS75E**
RF263T*AE**
RF260B*AE**

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Samsung may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for Samsung in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, Samsung shall test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the Samsung products listed above only, include:

1. In section 1, Definitions, the following definition:

''Defrost cycle type'' means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor ''off'' cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

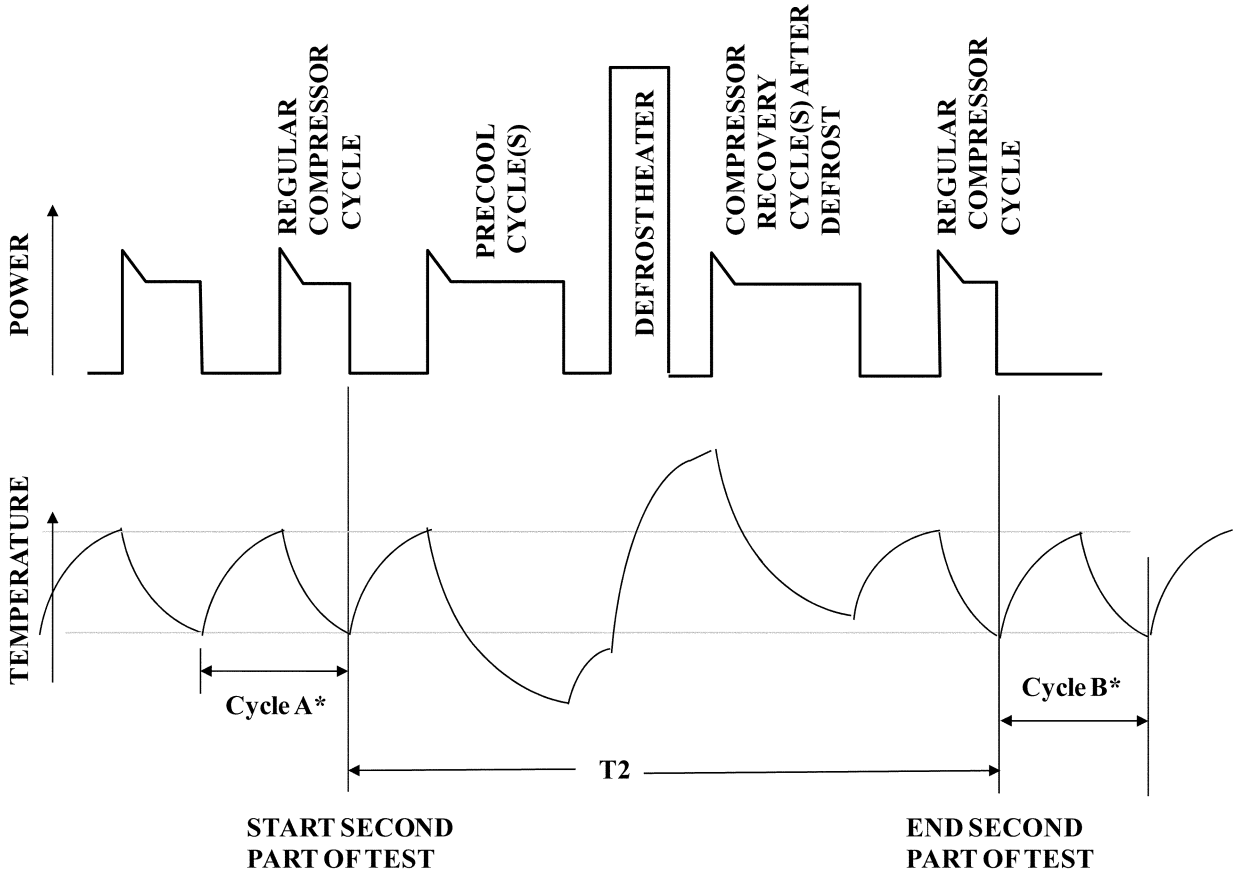
2. In section 4, Test Period, the following:

4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions (section 4.1). The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation.

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part of the test starts at the termination of the last regular compressor ''on'' cycle. The average temperatures of the fresh food and freezer compartments measured from the termination of the previous compressor ''on'' cycle to the termination of the last regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in either compartment to deviate from its average temperature for the first part of the test by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a ''precooling'' cycle, which is an extended compressor cycle that lowers the temperature(s) of one or both compartments prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the termination of the first regular compressor ''on'' cycle after both compartment temperatures have fully recovered to their stable conditions. The average temperatures of the compartments measured from this termination of the first regular compressor ''on'' cycle until the termination of the next regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. See Figure 1.

Figure 1

Long-time Automatic Defrost Diagram for Cycling Compressors



***Average compartment temperature(s) during cycles A & B must be within 0.5 °F of the average temperature(s) for the first part of the test.**

4.2.4 Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type.

3. In section 5, Test Measurements, the following:

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1 / T1) + \sum_{i=1}^{D} \left[\left(EP2_i - (EP1 \times T2_i / T1) \right) \times (12 / CT_i) \right]$$

Where:

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to

$(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

CT_{Li} = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (CT_L for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost

models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 6 and 96 shall be used, respectively.

D is the total number of distinct defrost cycle types.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Samsung's petition for waiver from certain parts of the test procedure that apply to clothes washers and grants an interim waiver to Samsung. DOE is publishing Samsung's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of refrigerator-freezer basic models that incorporate multiple defrost cycles.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 18600 Broadwick St., Rancho Dominguez, CA 90220. All submissions received must include the agency name and case number for this proceeding.

Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on February 28, 2012.

Kathleen B. Hogan,

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

December 14, 2011

Dr. Henry Kelly
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue SW.
Washington, DC 20585

Re: Samsung Petition for Waiver and Application for Interim Waiver, Single Compressor Refrigerator-Freezers with Multiple Defrost Cycles

Dear Assistant Secretary Kelly:

Samsung Electronics America, Inc. (''Samsung'') respectfully submits this Application for Interim Waiver and Petition for Waiver to the Department of Energy (''DOE'' or ''the Department'') for single compressor refrigerator-freezers with multiple defrost cycles that are manufactured by Samsung from DOE's test procedure for refrigerator-freezers.

Reasoning

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or 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.

Current test procedures as prescribed in Appendix A1 to Subpart B of Part 430 (''Appendix A1'') do not adequately provide a way for Samsung to accurately represent the energy consumption of its refrigerator-freezers with multiple defrost cycles. Previous, DOE concurred with Samsung's understanding in the interim waiver granted to Samsung in 76 FR 54456 and 76 FR 16760.[1] Meanwhile, DOE communicated that all manufacturers planning on marketing refrigerator-freezers with multiple defrost cycles must seek a waiver from the Department.[2]

Request

Samsung respectfully request immediate relief from being required to test or rate its refrigerator-freezer products that incorporate multiple defrost cycles according to 10 CFR part 430 subpart B, appendix A1. Instead, Samsung seeks the alternate test procedure as prescribed in 76 FR 54456, Section IV, ''Alternate Test Procedure'' for the following models:

PFSS6SMX****
PSB42******
RF323T*DB**
RF263B*AE**
RF263N*AE**
592 656**
GSE4820SS
RF323B*DB**
RF261B*AE**
RF263S*AE**
PSB48******
E42BS75E**
RF263T*AE**
RF260B*AE**

Please feel free to contact me if you have any questions regarding this Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,

Michael Moss,

Director of Corporate Environmental Affairs.

[FR Doc. 2012–5287 Filed 3–2–12; 8:45 am]

BILLING CODE 6450–01–P

[1] DOE understands, however, that absent an interim waiver, Samsung's products would not be accurately tested and rated for energy consumption because the current energy test procedure does not include test procedures for products with multiple defrost cycle types.

[2] Until these amendments are required in conjunction with the 2014 standards, manufacturers introducing products equipped with multiple defrost cycle types should, consistent with 10 CFR 430.27, petition for a waiver since the modified version of Appendix A1 set out in today's notice will not include a specified method for capturing this energy usage.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4304–001.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Amendment to Initial Tariff Filing to be effective 10/12/2011.
Filed Date: 2/24/12.
Accession Number: 20120224–5001.
Comments Due: 5 p.m. ET 3/16/12.

Docket Numbers: ER12–1151–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: Two E&P Agreements under PG&E's Transmission Owner Tariff and Report to be effective 2/24/2012.
Filed Date: 2/23/12.
Accession Number: 20120223–5109.
Comments Due: 5 p.m. ET 3/15/12.

Docket Numbers: ER12–1152–000.
Applicants: Bounce Energy PA, LLC.
Description: Application for Market-Based Rate Authority to be effective 2/24/2012.
Filed Date: 2/24/12.
Accession Number: 20120224–5002.
Comments Due: 5 p.m. ET 3/16/12.

Docket Numbers: ER12–1153–000.
Applicants: Bounce Energy NY, LLC.
Description: Application for Market-Based Rate Authority to be effective 2/24/2012.
Filed Date: 2/24/12.
Accession Number: 20120224–5003.
Comments Due: 5 p.m. ET 3/16/12.

Docket Numbers: ER12–1154–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Revisions to FCM Rules Related to De-List Bids to be effective 5/1/2012.
Filed Date: 2/24/12.
Accession Number: 20120224–5067.
Comments Due: 5 p.m. ET 3/16/12.

Docket Numbers: ER12–1155–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: MR 1 Revisions Relating to Coordinated Transaction Scheduling to be effective 12/31/9998.
Filed Date: 2/24/12.
Accession Number: 20120224–5091.
Comments Due: 5 p.m. ET 3/16/12.

Docket Numbers: ER12–1156–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: Agreement No. 1852, Niagara Mohawk and Griffiss Utility Services Corp IA to be effective 1/1/2012.
Filed Date: 2/24/12.
Accession Number: 20120224–5092.
Comments Due: 5 p.m. ET 3/16/12.

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: February 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–5240 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–76–000
Applicants: PPL Generation, LLC, AES Ironwood, L.L.C.
Description: Application for Authorization for Disposition of Jurisdictional Facilities of PPL Generation, LLC and AES Ironwood, L.L.C.
Filed Date: 2/27/12
Accession Number: 20120227–5127
Comments Due: 5 p.m. ET 3/19/12

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–91–002
Applicants: PJM Interconnection, L.L.C., Duke Energy Kentucky, Inc.
Description: Duke submits Amendment requesting Deferral of Action in ER12–91 and ER12–92 to be effective 1/1/2012.
Filed Date: 2/24/12
Accession Number: 20120224–5079
Comments Due: 5 p.m. ET 3/16/12

Docket Numbers: ER12–92–002
Applicants: PJM Interconnection, L.L.C., Duke Energy Kentucky, Inc.
Description: Duke submits Amendment requesting Deferral of Action in ER12–91 and ER12–92 to be effective 1/1/2012.
Filed Date: 2/24/12
Accession Number: 20120224–5080
Comments Due: 5 p.m. ET 3/16/12

Docket Numbers: ER12–682–000
Applicants: Erie Wind, LLC
Description: Supplemental information of Erie Wind, LLC.
Filed Date: 2/27/12
Accession Number: 20120227–5141
Comments Due: 5 p.m. ET 3/12/12

Docket Numbers: ER12–1013–001
Applicants: Physical Systems Integration, LLC
Description: Physical Systems Integration, LLC—Amendment to MBR Application to be effective 3/1/2012.
Filed Date: 2/24/12
Accession Number: 20120224–5090
Comments Due: 5 p.m. ET 3/16/12

Docket Numbers: ER12–1157–000
Applicants: PJM Interconnection, L.L.C., Commonwealth Edison Company
Description: ComEd submits 1st Amended Trans. Upgrade Agmt among ComEd & American Transm Co. to be effective 2/15/2012.
Filed Date: 2/24/12
Accession Number: 20120224–5155
Comments Due: 5 p.m. ET 3/16/12

Docket Numbers: ER12–1158–000
Applicants: Southwest Power Pool, Inc.
Description: 1166R15 Oklahoma Municipal Power Authority NITSA NOA to be effective 2/1/2012.
Filed Date: 2/27/12
Accession Number: 20120227–5043
Comments Due: 5 p.m. ET 3/19/12

Docket Numbers: ER12–1159–000
Applicants: California Independent System Operator Corporation
Description: Transmission Access Charge Informational Filing of the California Independent System Operator Corporation.
Filed Date: 2/24/12
Accession Number: 20120224–5182
Comments Due: 5 p.m. ET 3/16/12

Docket Numbers: ER12–1160–000
Applicants: Hampton Lumber Mills-Washington, Inc.
Description: Notice of Cancellation of Market-Based Rate Tariff of Hampton Lumber Mills-Washington, Inc.
Filed Date: 2/27/12
Accession Number: 20120227–5073
Comments Due: 5 p.m. ET 3/19/12

Docket Numbers: ER12–1161–000
Applicants: Fibrominn LLC
Description: Fibrominn LLC FERC Electric Rate Schedule No. 1 baseline eTariff to be effective 2/23/2012.
Filed Date: 2/27/12
Accession Number: 20120227–5074
Comments Due: 5 p.m. ET 3/19/12

Docket Numbers: ER12–1162–000
Applicants: PacifiCorp
Description: PAC Energy NITSA Rev 13 to be effective 2/1/2012.
Filed Date: 2/27/12
Accession Number: 20120227–5103
Comments Due: 5 p.m. ET 3/19/12

Docket Numbers: ER12–1163–000
Applicants: ATCO Power Canada Ltd.
Description: ATCO Power Canada Ltd. baseline eTariff 2012–02–22 to be effective 2/22/2012.
Filed Date: 2/27/12
Accession Number: 20120227–5106
Comments Due: 5 p.m. ET 3/19/12

Docket Numbers: ER12–1165–000
Applicants: ITC Midwest LLC
Description: Second Amendment of and Restatement of Facilities and Operating Agreement to be effective 4/27/2012.
Filed Date: 2/27/12
Accession Number: 20120227–5150
Comments Due: 5 p.m. ET 3/19/12

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–23–000
Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Application for Authorization of the Assumption of Liabilities and the Issuance of Securities under Section 204 of the Federal Power Act of Wolverine Power Supply Cooperative, Inc.

Filed Date: 2/24/12

Accession Number: 20120224–5173

Comments Due: 5 p.m. ET 3/16/12

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: February 27, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–5241 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–399–000.

Applicants: Rockies Express Pipeline LLC.

Description: 2012 Annual FL&U Percentage Adjustment to be effective 4/1/2012.

Filed Date: 2/24/12.

Accession Number: 20120224–5076.

Comments Due: 5 p.m. ET 3/7/12.

Docket Numbers: RP12–400–000.

Applicants: Texas Eastern Transmission, LP.

Description: Updates to GT&C Section 3.13 to be effective 4/1/2012.

Filed Date: 2/27/12.

Accession Number: 20120227–5075.

Comments Due: 5 p.m. ET 3/12/12.

Docket Numbers: RP12–403–000.

Applicants: Crossroads Pipeline Company.

Description: TRA 2012 to be effective 4/1/2012.

Filed Date: 2/27/12.

Accession Number: 20120227–5230.

Comments Due: 5 p.m. ET 3/12/12.

Docket Numbers: RP12–402–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Fuel Retention Rates—2012 to be effective 4/1/2012.

Filed Date: 2/28/12.

Accession Number: 20120228–5021.

Comments Due: 5 p.m. ET 3/12/12.

Docket Numbers: RP12–404–000.

Applicants: High Island Offshore System, L.L.C.

Description: 2012 Annual Fuel Filing to be effective 4/1/2012.

Filed Date: 2/28/12.

Accession Number: 20120228–5049.

Comments Due: 5 p.m. ET 3/12/12.

Docket Numbers: RP12–405–000.

Applicants: Transcontinental Gas Pipe Line Company

Description: Annual Fuel Tracker Filing 2012 to be effective 4/1/2012.

Filed Date: 2/28/12.

Accession Number: 20120228–5051.

Comments Due: 5 p.m. ET 3/12/12.

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.

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: February 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–5239 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF12–5–000]

Florida Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Planned I–595 Replacement Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Florida Gas Transmission Company's (FGT) planned I–595 Replacement Project (Project). The planned project involves the abandonment, relocation, and operation of interstate natural gas transmission facilities in Broward County, Florida. This EA will be used by the Commission in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on March 29, 2012.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of

typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

FGT plans to abandon and relocate existing natural gas transmission facilities in Broward County, Florida. According to FGT, the planned project would resolve conflicts with Florida Department of Transportation/Florida Turnpike Enterprise encroachments and would maintain the access required for normal operation and maintenance.

FGT would:

- Abandon approximately 0.48 mile of existing 36-inch-diamater natural gas transmission pipeline;
- Construct and operate approximately 0.60 mile of 36-inch-diamater natural gas transmission pipeline; and
- Abandon, relocate, realign and reconfigure minor transmission pipeline associated facilities.

The general location of the planned facilities is depicted in Appendix 1.[1]

Land Requirements for Construction

Abandonment and relocation of the planned facilities would disturb about 19 acres of land. Following construction, FGT would permanently maintain about three acres of land; the remaining acreage would be restored and revert to former uses. Almost all of the land that would be disturbed is either existing road/utility right-of-way or adjacent to existing road/utility rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the abandonment, relocation and operation of the planned project under these general headings:

- Geology and soils;
- Water resources and wetlands;
- Vegetation and wildlife;
- Land use;
- Air quality and noise; and
- Reliability and safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we will contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before March 29, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF12–5–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Becoming an Intervenor

Once FGT files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF12–5–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5234 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF12–4–000]

Excelerate Energy L.P.; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Aguirre Offshore Gasport Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will address the environmental impacts of the Aguirre Offshore GasPort Project involving construction and operation of facilities by Excelerate Energy L.P. (Excelerate) in Salinas, Puerto Rico. The Commission will use this EIS in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process that the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EIS. Please note that the scoping period will close on March 30, 2012.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meetings scheduled as indicated below. The Commission will conduct the public scoping meetings in English, but there will be a concurrent Spanish language translation available.

Date and time	Location
March 20, 2012; 7 p.m. AST	Lions Club, Carretera 3 km Street Carrete, Guayama, Puerto Rico 00785.
March 21, 2012; 7 p.m. AST	Marina de Salinas, P.R. 701 (end) Playa Ward, Salinas, Puerto Rico 00751.

This notice is being sent to the Commission's current environmental mailing list for this project. A flyer containing a brief project description and the above meeting information distributed in the general project area presents information on how to obtain copies of this notice in Spanish. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Excelerate has announced its plans to construct and operate a maritime liquefied natural gas (LNG) import terminal and approximately 4 miles of 18-inch-diameter pipeline linking the receiving facility to the existing onshore Puerto Rico Electric Power Authority's Central Aguirre Power Plant (CAPP). The LNG terminal would be in Puerto Rican waters, about 1 mile outside of Jobos Bay and 4 miles off the southern coast of Puerto Rico, near the towns of Salinas and Guayama. This offshore portion of the project would consist of a fixed platform and a permanently docked storage and regasification vessel. The facility would operate year-round to receive, vaporize, and deliver up to 500 million cubic feet per day of natural gas to the CAPP.

Specifically, the Aguirre Offshore GasPort Project would consist of the following:

• Construction of a fixed platform carrying topside facilities and two berths, one on each side of the fixed platform;

• Permanent docking of an LNG vessel at the fixed platform with a storage capacity of 150,900 cubic meters;

• Construction of about 4 miles of new 18-inch-diameter subsea pipeline, which would be coated in protective concrete and laid atop the sea floor; and

• Construction of a new onshore metering and regulating (M&R) station within the boundaries of the power plant.

The general location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Excelerate is still in the planning phase for the Aguirre Offshore GasPort Project, and workspace requirements have not been finalized. However, all facility construction would be completed offshore with the exception of the M&R station. Following construction, less than 1 acre would be used for permanent operation of the project's onshore facilities.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers authorizing new natural gas facilities. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

• Geology and soils;
• Water resources and sea floor;
• Marine vegetation;
• Fisheries, wildlife, and endangered and threatened species;
• Cultural resources;
• Land use;
• Air quality and noise;
• Socioeconomics; and
• Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS. In addition, we participated in Excelerate's February 2, 2012 public informational open house meeting in the project area to explain the environmental review process to interested stakeholders and to answer questions about the FERC process.

We will present our independent analysis of the issues in the EIS, which we will publish in both English and Spanish and distribute for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider your comments, please carefully follow the instructions in the Public Participation section of this notice beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EIS. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Army Corps of Engineers and U.S. Coast Guard have expressed their intentions to participate as cooperating agencies in the preparation of the EIS to satisfy their NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Puerto Rico State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (including contractor/pipe storage yards and access roads). Our EIS for this project will document our findings on the impacts on cultural resources and summarize the status of consultations under Section 106.

Currently Identified Environmental Issues

We have already identified several issues and alternatives that we think deserve attention based on a preliminary review of the planned facilities, comments made to us at the informational open house, preliminary consultations with other agencies, and initial environmental information provided by Excelerate. This preliminary list of issues may be changed based on your comments and our analysis:

• Impacts on recreational fishing, marine mammals, and shipping traffic in Jobos Bay and near the offshore facility; and
• Visual impacts.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before March 30, 2012.

For your convenience, there are four methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF12–4–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

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[3] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically by using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature located on the Commission's Web site (*www.ferc.gov*), under the link *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister*. You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing'';

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) You can also place your written comments in the Aguirre Offshore GasPort Project Comment Box located at the Salinas Public Library. We will arrange for our contractor to forward comments in the drop box directly to FERC where they will be placed into the public file for the project. The library is located on Calle Santos P Amadeo in Salinas, Puerto Rico and is open from Monday to Thursday from 9:30 to 6 p.m. and Friday from 8 to 4:30. The library is closed on weekends.

Environmental Mailing List

The environmental mailing list includes federal, commonwealth, and local government representatives and agencies; elected officials; environmental and public interest groups; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will continue to update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. This distribution will be a CD containing both the English and Spanish version of the document. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2). The return mailer provides you the opportunity to request either an English or Spanish version of the EIS hard copy.

Becoming an Intervenor

Once Excelerate files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF12–4). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5233 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–15–000]

Enogex LLC; Notice of Filing

Take notice that on February 24, 2011, Enogex LLC (Enogex) filed pursuant to Exhibit A to its Operating Conditions Applicable to Transportation Services (SOC) and section 284.123(e) of the Commission's regulations, to revise its annual fuel percentages as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 27, 2012.

Dated: February 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5237 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–16–000]

American Midstream (Louisiana Intrastate), LLC; Notice of Filing

Take notice that on February 28, 2012, American Midstream (Louisiana Intrastate), LLC filed to revise its Statement of Operating Conditions to provide for a new Fuel Retention calculation as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, March 12, 2012.

Dated: February 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5238 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–20–003]

American Midstream (Louisiana Intrastate) LLC ; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on January 20, 2012, American Midstream (Louisiana Intrastate) LLC (AMLI) filed a motion requesting an extension consistent with the Federal Energy Regulatory Commission's (Commission) revised policy of periodic review from a triennial to a five year period. The Commission, in Order No. 735, modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, AMLI requests that the date for its next rate filing be extended to March 4, 2014, which is five years from the date of AMLI's most recent rate filing with this Commission.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 6, 2012.

Dated: February 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5235 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL12–36–000; QF89–25–008]

Morgantown Energy Associates; Notice of Petition for Enforcement

Take notice that on February 24, 2012, Morgantown Energy Associates (MEA) filed a Petition for Enforcement, pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA), requesting that the Federal Energy Regulatory Commission (Commission) initiate enforcement action against the Public Service Commission of West Virginia (PSC), because of the PSC's issuance of an order on November 22, 2011.[1] MEA argues that the ruling in the PSC Order is contrary to PURPA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

[1] Monongahela Power Co. and The Potomac Edison Co., both dba Allegheny Power, Case No. 11–0249–E–P (Pub. Serv. Comm'n of W. Va., Nov. 22, 2011). (PSC Order)

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 16, 2012.

Dated: February 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5232 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM12–10–000]

Solar Energy Industries Association: Notice of Petition for Rulemaking

Take notice that on February 16, 2012, Solar Energy Industries Association, pursuant to sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d and 824e and Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure 18 CFR 385.207, filed a petition requesting that the Commission initiate a rulemaking to update its small generator interconnection rules and procedures [1] for solar electric generation.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 27, 2012.

Dated: February 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5230 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005) , *order on reh'g,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–71–000]

Dominion Transmission, Inc.; Notice of Request Under Blanket Authorization

Take notice that on February 17, 2012, Dominion Transmission, Inc. (Dominion), 701 East Cary Street, Richmond, Virginia 23219 filed in Docket No. CP12–71–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA). Dominion seeks authorization to abandon by removal its XS–3029 Measurement and Regulation Station (XS–3029) in Marshall County, West Virginia. Dominion proposes to perform these activities under its blanket certificate issued in Docket No. CP82–537–000 [21 FERC ¶ 62,172 (1982)], all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In 2011, the West Virginia Division of Highways consulted with Dominion regarding a road widening project on State Route 2 in the vicinity of XS–3029. Dominion determined that XS–3029 is within the proposed area designated to be excavated for the project. Dominion states that the facility has not been used to provide any transportation in the previous one-year period and Dominion seeks to abandon the facility by removal in advance of the project.

The filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Brad Knisley, Regulatory and Certificates Analyst III, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, or by calling (804) 771–4412 (telephone) or (804) 771–4804 (fax), *Brad.A.Knisley@dom.com.*

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be

deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1) (iii) and the instructions on the Commission's web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: February 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–5231 Filed 3–2–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0707; Notice-3; FRL–9643–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on August 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0707: Notice-3, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: sosnowski.dave@epa.gov.*
- *Fax:* (734)–214–4052.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), Mailcode: 6102T, 1200 Pennsylvania Ave NW., Room: B108, Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room: B108; Mail Code: 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0707: Notice-3. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Dave Sosnowski, Environmental Protection Agency, Office of Transportation and Air Quality, Transportation and Climate Division, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: (734) 214–4823; fax number: (734) 214–4052; email address: *sosnowski.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0707: Notice-3, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave NW., Washington, DC. The EPA/DC 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 Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA–HQ–OAR–2008–0707: Notice-3.

Affected entities: Entities potentially affected by this action are the state government agencies or departments responsible for oversight and operation of the I/M programs (SIC#91). Thirty-three states plus the District of Columbia will be affected by I/M program requirements.

Title: Data Reporting Requirements for State and Local Vehicle Emission Inspection and Maintenance (I/M) Programs.

ICR numbers: EPA ICR No. 1613.03, OMB Control No. 2060–0252.

ICR status: This ICR is currently scheduled to expire on August 31, 2012. 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 EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: To provide general oversight and support to state and local I/M programs, the Transportation and Regional Programs Division (TRPD), Office of Transportation and Air Quality, Office of Air and Radiation, U. S. Environmental Protection Agency, requires that state or local program management for both basic and enhanced I/M programs collect two varieties of reports to EPA. The first reporting requirement is the submittal of an annual report providing general program operating data and summary statistics, addressing the program's current design and coverage, a summary of testing data, enforcement program efforts, quality assurance and quality control efforts, and other miscellaneous information allowing for an assessment of the program's relative effectiveness; the second is a biennial report on any changes to the program over the two-year period and the impact of such changes, including any weaknesses discovered and corrections made or planned.

General program effectiveness is determined by the degree to which a program misses, meets, or exceeds the emission reductions committed to in the state's approved SIP, which, in turn, must meet or exceed the minimum emission reductions expected from the relevant performance standard, as promulgated under EPA's revisions to 40 CFR, Part 51, in response to requirements established in section 182 of the Clean Air Act Amendments of 1990 (Act). This information will be used by EPA to determine a program's progress toward meeting requirements under 40 CFR, Part 51, as well as to assess national trends in the area of basic and enhanced I/M programs and to provide background information in support of periodic site visits and evaluations.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 85 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 28.

Frequency of response: Annual and Biennial.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,380 hours.

Estimated total annual costs: $144,564. This includes an estimated burden cost of $144,564 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is a change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB due to increased Office of Personnel Management estimates for labor costs for clerical, technical, and management personnel. The total cost and burden associated with this ICR has gone down, however, due to a reduction in the number of respondents covered by the collection.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 28, 2012.

Karl Simon,

Director, Transportation and Climate Division, Office of Office of Transportation and Air Quality.

[FR Doc. 2012–5254 Filed 3–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9642–8]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Ohio's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective April 4, 2012 for the State of Ohio's National Primary Drinking Water Regulations Implementation program if no timely request for a public hearing is received and accepted by the Agency; and on March 5, 2012 for the State of Ohio's other authorized programs.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, or Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the State, Tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the State, Tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On December 9, 2010, the Ohio Environmental Protection Agency (Ohio EPA) submitted an application titled ''eBusiness Center Electronic Document Receiving System'' for revisions/modifications of its EPA-authorized programs under title 40 CFR. EPA reviewed Ohio EPA's request to revise its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Ohio's request to modify/revise its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 61, 70, 122, 141, 146, and 262–265 is being published in the **Federal Register**:

Part 60—Standards of Performance for New Stationary Sources;

Part 70—State Operating Permit Programs;

Part 123—National Pollutant Discharge Elimination System State Program Requirements;

Part 142—National Primary Drinking Water Regulations Implementation; and

Part 272—Approved State Hazardous Waste Management Programs.

Ohio EPA was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Ohio's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Ohio's request to revise its Part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: February 23, 2012.

Andrew Battin,

Director, Office of Information Collection.

[FR Doc. 2012–5255 Filed 3–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9642–7]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Authorized Representative, South Dakota Department of Environment and Natural Resources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.310(h)(3) for notice of disclosure to its authorized representative, the South Dakota Department of Environment and Natural Resources (SD DENR), Superfund confidential business information (CBI) which has been submitted to EPA Region 8, Office of Ecosystems Protection and Remediation.

DATES: Comments may be submitted until April 4, 2012.

ADDRESSES: Comments should be sent to: Sharon Abendschan (Mail Code 8ENF–RC), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

FOR FURTHER INFORMATION CONTACT: Andrea Madigan (Mail Code 8ENF–L), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129 (303) 312–6904.

Notice of Required Determinations, Provisions, and Opportunity To Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, (commonly known as ''Superfund'') requires the establishment of an

administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records including those relevant to cost recovery. EPA has granted authorized representative status to the State of South Dakota Department of Environment and Natural Resources. Pursuant to 40 CFR 2.310(h)(3), a state or local governmental agency which has duties or responsibilities under CERCLA, or under regulations which implement CERCLA, may be considered an authorized representative of the United States for purposes of disclosure of CBI and may be furnished such CBI upon the agency's written request, but only if:

(i) The agency has first furnished to the EPA office, having custody of the information, a written opinion from the agency's chief legal officer or counsel stating that under applicable state or local law the agency has the authority to compel a business which possesses such information to disclose it to the agency, or

(ii) Each affected business is informed of those disclosures under this paragraph (h)(3) which pertain to it, and the agency has shown to the satisfaction of an EPA legal office that the agency's use and disclosure of such information will be governed by state or local law and procedures which will provide adequate protection to the interests of affected businesses.

Pursuant to 40 CFR 2.310(h)(4), at the time any information is released to a state or local government pursuant to paragraph 2.310(h), EPA must notify the state or local government that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the state or local government and its employees to penalties in section 104(e)(2)(B) of CERCLA. EPA has determined that SD DENR has satisfied the requirements of subparagraph 40 CFR 2.310(h)(3)(ii) that the agency demonstrate to the satisfaction of EPA that the agency's use and disclosure of such information will be governed by state or local law and procedures which will provide adequate protection to the interests of affected businesses. EPA hereby advises affected parties that they are informed of potential disclosures to SD DENR under paragraph 40 CFR 2.310(h)(3), and that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii), incorporated by reference into 40 CFR 2.310(h)(2).

Comments should be sent to: Environmental Protection Agency, Region 8, Sharon Abendschan (Mail Code 8ENF–RC), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

Andrew M. Gaydosh,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA, Region 8.

[FR Doc. 2012–5258 Filed 3–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9642–4]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1), notice is hereby given of a proposed administrative settlement concerning the Eagle Picher Carefree Battery Superfund Site, located in Socorro, Socorro County, New Mexico.

The settlement requires the one (1) settling party to pay a total of $200,000.00 as payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to Section 107 of CERCLA, 42, U.S.C. 9607.

For thirty (30) days beginning the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before April 4, 2012.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Robert Werner, Enforcement Officer, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–6724. Comments should reference the Eagle Picher Carefree Battery Superfund Site, located in Socorro, Socorro County, New Mexico and EPA CERCLA Docket Number 06–08–11, and should be addressed to Robert Werner, Enforcement Officer, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Gloria Moran, Attorney, 1445 Ross Avenue Dallas, Texas 75202–2733 or call (214) 665–3193.

Dated: February 17, 2012.

Al Armendariz,

Regional Administrator (6RA).

[FR Doc. 2012–5262 Filed 3–2–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9642–6]

Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the Commonwealth of Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and Solicitation of Requests for a Public Hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act, as amended, and the requirements governing the National Primary Drinking Water Regulations Implementation, 40 CFR part 142, that the Commonwealth of Virginia is revising its approved Public Water System Supervision Program. The Commonwealth has adopted the Long Term 2 Enhanced Surface Water Treatment Rule and the Stage 2 Disinfectants and Disinfection Byproducts Rule which will provide for better public health protection by reducing potential cancer and reproductive and developmental health risks from disinfection byproducts in drinking water and by reducing illness linked with Cryptosporidium and other pathogenic microorganisms in drinking water. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. EPA is taking action to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by

April 4, 2012. This determination shall become effective on April 4, 2012 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect on his own to hold a hearing, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street Philadelphia, PA 19103–2029. Comments may also be submitted electronically to *Hoover.Michelle@epa.gov.* All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch (3WP21), Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Office of Drinking Water, Virginia Department of Health, Madison Building, 6th Floor, 109 Governor Street Room 632, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: Michelle Hoover at the Philadelphia address given above, telephone (215) 814–5258, fax (215) 814–2302, or email *Hoover.Michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered; if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by April 4, 2012, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: February 22, 2012.

W.C. Early,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 2012–5259 Filed 3–2–12; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting Notice

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 8, 2012, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter to be considered at the meeting is:

Open Session

A. Approval of Minutes

- February 9, 2012

Dated: March 1, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–5405 Filed 3–1–12; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: 10 a.m., Thursday, March 8, 2012.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor on behalf of Pendley* v. *Highland Mining Co.,* Docket Nos. WEVA 2006–506–D et al. (Issues include whether the Commission's prior decision upholding the judge's determination that no unlawful discrimination occurred was consistent with Commission precedents.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: February 29, 2012.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–5334 Filed 3–1–12; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Corporation to do Business Under Section 25A of the Federal Reserve Act

The companies listed in this notice have applied to the Board for approval, pursuant to Section 25A of the Federal Reserve Act (Edge Corporation) 12 U.S.C. 611 *et seq.,* and all other applicable statutes and regulations to establish an Edge Corporation. The Edge Corporation will operate as a subsidiary of the applicant, Lake Forest Bank and Trust Company, Lake Forest, Illinois. The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.4).

The applications below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in Section 25 of the Federal Reserve Act.

Unless otherwise noted, comments regarding each of these applications may be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Lake Forest Bank and Trust Company,* Lake Forest, Illinois; to establish FIFC Edge International Corp., Lake Forest, Illinois, as an Edge Corporation.

Board of Governors of the Federal Reserve System, February 29, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–5268 Filed 3–2–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *First Palmetto Financial Corporation,* Camden, South Carolina; to become a bank holding company upon the conversion of First Palmetto Savings Bank, F.S.B., Camden, South Carolina, to a state chartered commercial bank.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Carpenter Fund Manager GP, LLC, Carpenter Fund Management Company, LLC, Carpenter Community Bancfund, L.P., Carpenter Community BanFund -A, L.P., Carpenter Community BandFund-CA, L.P., SCJ, Inc., and CCFW, Inc.,* all in Irvine, California; to acquire approximately 28 percent of the voting securities of Pacific Mercantile Bancorp, and thereby indirectly acquire voting shares of Pacific Mercantile Bank, both in Costa Mesa, California.

Board of Governors of the Federal Reserve System, February 28, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–5211 Filed 3–2–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 2012.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Bryn Mawr Bank Corporation,* Bryn Mawr, Pennsylvania, to acquire Davidson Trust Company, Devon, Pennsylvania and thereby engage in trust company activities, pursuant to section 225.28(b)(5); providing financial and investment advice, pursuant to section 225.28(b)(7); and providing agency transactional services for customers, pursuant to section 225.28(b)(6).

Board of Governors of the Federal Reserve System, February 28, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–5210 Filed 3–2–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

Correction

In notice document 2012–2665 appearing on pages 6114–6122 in the issue of February 7, 2012, make the following correction:

On page 6117, the table entitled ''Regulation M: Disclosures—Burden Hours'' should appear as follows:

REGULATION M: DISCLOSURES—BURDEN HOURS

Disclosures	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/ monitoring burden (minutes)	Number of transactions	Average burden per transaction (minutes)	Total trans-action burden (hours)	Total burden (hours)
Motor Vehicle Leases [1]	29,442	1	29,442	1,972,614	.50	16,438	45,880
Other Leases [2]	25,000	.50	12,500	250,000	.25	1,042	13,542
Advertising	13,471	.50	6,736	538,840	.25	2,245	8,981

REGULATION M: DISCLOSURES—BURDEN HOURS—Continued

Disclosures	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/ monitoring burden (minutes)	Number of transactions	Average burden per transaction (minutes)	Total trans-action burden (hours)	Total burden (hours)
Total							68,403

[1] This category focuses on consumer vehicle leases. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) *See* 15 U.S.C. 1667(1); 12 CFR § 1013.2(e)(1). Leases up to $50,000 (plus an annual adjustment) are now covered, which increases the breadth of transactions subject to the FTC's jurisdiction under Regulation M. This increase, however, is more than offset by the FTC now sharing PRA burden with the CFPB, which thus yields a net decrease from past FTC estimates of the number of transactions.

[2] This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumer leases for more than four months are covered.) *See* 15 U.S.C. 1667(1); 12 CFR 1013.2(e)(1). The figures shown for respondents and transactions reflect a net decrease from prior FTC estimates, given current market conditions and the new PRA burden sharing with the CFPB while also recognizing that the CLA and Regulation M now cover leases up to $50,000 (plus an annual adjustment).

[FR Doc. C1–2012–2665 Filed 3–2–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990-new; 30-day notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Evaluation of the Consumer Education Campaign ''Make the Call—Don't Miss a Beat'', OMB No. 0990–NEW—The Office on Women's Health (OWH).

Abstract: The ''Make the Call. Don't Miss a Beat'' campaign is a national Public Service Announcement (PSA) campaign that aims to educate, engage and empower women and their families to learn the seven most common symptoms of a heart attack and to call 911 as soon as those symptoms arise. The campaign launched in February, 2011 and includes TV, radio, print and social media PSA. This study will collect information on awareness of the ''Make the Call—Don't Miss a Beat'' campaign, knowledge about heart disease, and likelihood of calling 911 as the first response to the symptoms of a heart attack. These questions will be added to an existing study conducted by the American Heart Association. Information will be collected through the use of a probability sample, Random Digit Dial telephone survey. The respondent base will be surveyed only once, as this is a single-wave survey. The sampling plan is to include a minimum of 1200 women from the United States general population.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Screener	General Population, Adult Women, 25+.	4,300	1	2/60	143
Main instrument	General Population, Adult Women, 25+.	1,200	1	4/60	80
Total					223

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2012–5215 Filed 3–2–12; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Biodefense Science Board

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding two closed sessions by teleconference under exemption 9(B) of the Government in Sunshine Act, 5 U.S.C. section 552b(c).

DATES: The March 29, 2012, and April 30, 2012, NBSB closed sessions by teleconference are tentatively scheduled from 1 p.m. to 5 p.m. The agenda and time are subject to change as priorities dictate.

ADDRESSES: The closed sessions will occur by teleconference and will not be open to the public as stipulated under exemption 9(B) of the Government in Sunshine Act, 5 U.S.C. section 552b(c).

FOR FURTHER INFORMATION CONTACT: MacKenzie Robertson, Acting Executive Director, NBSB, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services; Email: *NBSB@HHS.GOV*.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d–7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary and/or the Assistant Secretary for Preparedness and Response on other matters related to public health emergency preparedness and response.

Background: The Board is being asked to review and evaluate the 2012 Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) Strategy and Implementation Plan (SIP). Until a final document is approved by the Secretary of the Department of Health and Human Services (HHS), the development of PHEMCE SIP requires consideration and discussion of procurement-sensitive information that should not be released to the public prior to the Secretary's final decision. Premature public disclosure of the draft PHEMCE SIP would limit the Secretary's decision-making ability to effectively prioritize HHS expenditures on critical medical countermeasures. Therefore, the Board's deliberations on the new task will be conducted in closed sessions in accordance with provisions set forth under exemption 9(B) of the Government in Sunshine Act, 5 U.S.C. section 552b(c), and with approval by the Assistant Secretary for Preparedness and Response.

Availability of Materials: All public materials will be posted on the NBSB Web site at *www.phe.gov/nbsb*.

Procedures for Providing Public Input: All written comments should be sent by email to *NBSB@HHS.GOV* with ''NBSB Public Comment'' as the subject line.

Dated: February 27, 2012.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2012–5200 Filed 3–2–12; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: National Child Abuse and Neglect Data System.

OMB No: 0980–0229.

Description: The Administration on Children, Youth and Families in the U.S. Department of Health and Human Services (HHS) established the National Child Abuse and Neglect Data System (NCANDS) to respond to the 1988 and 1992 amendments (Pub. L. 100–294 and Pub. L. 102–295) to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et seq.*), which called for the creation of a coordinated national data collection and analysis program, both universal and case specific in scope, to examine standardized data on false, unfounded, or unsubstantiated reports.

In 1996, the Child Abuse Prevention and Treatment Act was amended by Public Law 104–235 to require that any State receiving the Basic State Grant work with the Secretary of the Department of Health and Human Services (HHS) to provide specific data on child maltreatment, to the extent practicable. These provisions were retained in the 2010 reauthorization of CAPTA (Pub. L. 113–320).

Each State to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

1. The number of children who were reported to the State during the year as victims of child abuse or neglect.

2. Of the number of children described in paragraph (1), the number with respect to whom such reports were—

A. substantiated;

B. unsubstantiated; or

C. determined to be false.

3. Of the number of children described in paragraph (2)—

A. the number that did not receive services during the year under the State program funded under this section or an equivalent State program;

B. the number that received services during the year under the State program funded under this section or an equivalent State program; and

C. the number that were removed from their families during the year by disposition of the case.

4. The number of families that received preventive services, including use of differential response, from the State during the year.

5. The number of deaths in the State during the year resulting from child abuse or neglect.

6. Of the number of children described in paragraph (5), the number of such children who were in foster care.

7.A. The number of child protective service personnel responsible for the—

i. intake of reports filed in the previous year;

ii. screening of such reports;

iii. assessment of such reports; and

iv. investigation of such reports.

B. The average caseload for the workers described in subparagraph (A).

8. The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

9. The response time with respect to the provision of services to families and children where an allegation of child abuse or neglect has been made.

10. For child protective service personnel responsible for intake, screening, assessment, and investigation of child abuse and neglect reports in the State—

A. information on the education, qualifications, and training requirements established by the State for child protective service professionals, including for entry and advancement in the profession, including advancement to supervisory positions;

B. data of the education, qualifications, and training of such personnel;

C. demographic information of the child protective service personnel; and

D. information on caseload or workload requirements for such personnel, including requirements for average number and maximum number of cases per child protective service worker and supervisor.

11. The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse or neglect, including the death of the child.

12. The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

13. The annual report containing the summary of activities of the citizen review panels of the State required by subsection (c)(6).

14. The number of children under the care of the State child protection system who are transferred into the custody of the State juvenile justice system.

15. The number of children referred to a child protective services system under subsection (b)(2)(B)(ii).

16. The number of children determined to be eligible for referral, and the number of children referred, under subsection (b)(2)(B)(xxi), to agencies providing early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*).

The Children's Bureau proposes to continue collecting the NCANDS data through the two files of the Detailed Case Data Component, the Child File (the case-level component of NCANDS) and the Agency File (additional aggregate data, which cannot be collected at the case level). Technical assistance will be provided so that all States may provide the Child File and Agency File data to NCANDS.

The Children's Bureau proposes to modify the Child File by adding five new fields.

- Field 147, Report Time: The Report Time field will collect the hour and minutes when the report was received. Currently NCANDS collects only the date when the report was received. Adding the time field will allow for a more accurate computation of the time between receipt of the report and the start of the investigation or other response.
- Field 148, Investigation Start Time: The Investigation Start Time field will collect the hour and minutes when the investigation or other response was initiated. Currently NCANDS collects only the date the investigation or other response was started. Adding the time field will allow for a more accurate computation of the time between receipt of the report and the start of the investigation or other response.
- Field 149, Maltreatment Death Date: The Maltreatment Death Date field will collect the date when a child who died of child abuse or neglect died. Currently NCANDS only collects that the child was determined to have died due to maltreatment, but does not collect the date. Since determinations of cause of death can take several months, adding the date of death will allow for more accurate counts of deaths that occurred during the reporting period in addition to the ability to count those for which the finding was established during the reporting period.
- Field 150, Near Fatality: The Near Fatality field will establish a flag as to whether the State has determined that the child was so severely injured that it should be classified as a near fatality. A focus on near fatalities is evident in CAPTA (Sec.106 (b)(2)(B)(x)) and the counts of such cases will be useful in establishing prevention activities.
- Field 151, Foster Care Discharge Date: The Foster Care Discharge Date field will collect the date of discharge, if discharge has occurred, for each child who has the Removal Date field. Currently NCANDS collects only the start of foster care but does not collect the end of foster care, when a child is returned home or has another permanent outcome. Adding this field will allow a more accurate computation of the number of children who were maltreated in foster care.

The reauthorization of CAPTA specifies for two counts, ''The number of children determined to be eligible for referral, and the number of children referred, under subsection (b)(2)(B)(xxi), to agencies providing early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*).'' (Sec. 106(d)(16)).

The children under subsection (b)(2)(B)(xxi) are defined as, ''* * * a child under the age of 3 who is involved in a substantiated case of child abuse or neglect [referred] to early intervention services funded under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*).''

The Children's Bureau proposes to modify the Agency File by adding two new fields.

- Field 5.1, Number of Children Eligible for Referral to Agencies Providing Early Intervention Services Under Part C of the Individuals With Disabilities Education Act: This field will collect the number of children who are considered by the State to be eligible for referral to Part C agencies.
- Field 5.2, Number of Children Referred to Agencies Providing Early Intervention Services Under Part C of the Individuals With Disabilities Education Act: This field will collect the number of children who were actually referred to Part C agencies.

The information collected by NCANDS will be used to better understand the experiences of children and families served by State and local child protective services agencies and to guide policy and program development at the national and local levels. Data collected through the NCANDS will also be used to support HHS with responding to the requirements of the Government Performance and Results Act (GPRA); reporting to Congress on States' performance on national child welfare outcomes; and monitoring States through the CFSRs.

Respondents: State governments, the District of Columbia, and the Commonwealth of Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Case Data Component Child File and Agency File	52	1	121	6,292

Estimated Total Annual Burden Hours: 6,292.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information may be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection activity—National Child Abuse and Neglect Data System.

The Department specifically requests comments on: (a) The proposed change to the two data collection instruments—the Child File and the Agency File; (b) 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; (c) the quality, utility, and clarity of the information to be collected; (d) the accuracy of the agency's estimate of the burden of the proposed collection of information; and (e) 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.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–5251 Filed 3–2–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Advisory Committees; Filing of Closed Meeting Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the Agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings during fiscal year 2011.

ADDRESSES: Copies are available from the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 301–827–6860.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hays, Advisory Committee and Oversight Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8220.

SUPPLEMENTARY INFORMATION: Under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. app.) and 21 CFR 14.60(d), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 2010 through September 30, 2011:

Center for Biologics Evaluation and Research

Allergenic Products Advisory Committee

Blood Products Advisory Committee

Cellular, Tissue and Gene Therapies Advisory Committee

Vaccines and Related Biological Products Advisory Committee

Center for Drug Evaluation and Research

Cardiovascular and Renal Drugs Advisory Committee

Gastrointestinal Drug Advisory Committee

National Center for Toxicological Research

Science Board to the National Center for Toxicological Research

Center for Tobacco Products

Tobacco Products Scientific Advisory Committee

Annual reports are available for public inspections between 9 a.m. and 4 p.m., Monday through Friday.

- The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE., Rm. 133, Washington, DC; and
- The Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–5208 Filed 3–2–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection: Comment Request Post-Award Reporting Requirements Including New Research Performance Progress Report Collection

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Public Health Service (PHS) Post-award Reporting Requirements. *Type of Information Collection Request:* Revision. This collection represents a consolidation of post-award reporting requirements under the PRA, and includes the new Research Performance Progress Report (RPPR). *Need and Use of Information Collection:* The RPPR will replace existing interim performance reports used by all NIH, Food and Drug Administration, Centers for Disease Control and Prevention, and Agency for Healthcare Research and Quality (AHRQ) grantees. Interim progress reports are required to continue support of a PHS grant for each budget year within a competitive segment. The phased transition to the RPPR requires the maintenance of dual reporting processes for a period of time. Thus this information collection is for the new use of the RPPR, and continued use of the PHS Non-competing Continuation Progress Report (PHS 2590, currently approved under 0925–0001), and the NIH AHRQ Ruth L. Kirschstein National Research Service Award (NRSA) Individual Fellowship Progress Report for Continuation Support (PHS 416–9, currently approved under 0925–0002). Only one interim progress report (RPPR or PHS2590/416–9) will be utilized for any given award. This collection also includes other PHS post-award reporting requirements: PHS 416–7 NRSA Termination Notice, PHS 2271 Statement of Appointment, 6031–1 NRSA Annual Payback Activities Certification, (currently approved under 0925–0002, expiration 6/30/2012); and HHS 568 Final Invention Statement and Certification, Final Progress Report instructions, and iEdison, and PHS 3734 Statement Relinquishing Interests and Rights in a PHS Research Grant

(currently approved under 0925–0001, expiration 6/30/2012). The PHS 416–7, 2271, and 6031–1 are used by NRSA recipients to activate, terminate, and provide for payback of a NRSA. Close-out of an award requires a Final Invention Statement (HHS 568) and Final Progress Report. iEdison allows grantees and Federal agencies to meet statutory requirements for reporting inventions and patents. The PHS 3734 serves as the official record of grantee relinquishment of a PHS award when an award is transferred from one grantee institution to another. Pre-award reporting requirements are simultaneously consolidated under 0925–0001. *Frequency of response:* Grantees are required to report annually. *Affected Public:* Universities and other research institutions; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government. *Type of Respondents:* University administrators and principal investigators. The annual reporting burden is as follows: *Total Estimated Number of Respondents:* 112,986. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* 5.6. *Estimated Total Annual Burden Hours Requested:* 640,677. The annualized cost to respondents is estimated to be $22,423,709. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Mikia Currie, email: *curriem@od.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: February 28, 2012.

Joe Ellis,

Director, Office of Policy for Extramural Research Administration, Office of Extramural Research, National Institutes of Health.

[FR Doc. 2012–5306 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection: Comment Request; Revision ''PHS Applications and Pre-Award Reporting Requirements''

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Public Health Service (PHS) Applications and Pre-award Reporting Requirements. *Type of Information Collection Request:* Revision, OMB 0925–0001, Expiration Date 6/30/2012. Form numbers: PHS 398, PHS416–1, 416–5, and PHS 6031. This collection represents a consolidation of PHS applications and pre-award reporting requirements into a revised data collection under the PRA. *Need and Use of Information Collection:* This collection includes PHS applications and pre-award reporting requirements: PHS 398 [paper] Public Health Service Grant Application forms and instructions; PHS 398 [electronic] PHS Grant Application component forms and agency specific instructions used in combination with the SF424 (R&R); PHS Fellowship Supplemental Form and agency specific instructions used in combination with the SF424 (R&R) forms/instructions for Fellowships [electronic]; PHS 416–1 Ruth L. Kirschstein National Research Service Award Individual Fellowship Application Instructions and Forms used only for a change of sponsoring institution application [paper]; Instructions for a Change of Sponsoring Institution for NRSA Fellowships (F30, F31, F32 and F33) and non-NRSA Fellowships; PHS 416–5 Ruth L. Kirschstein National Research Service Award Individual Fellowship Activation Notice; and PHS 6031 Payback Agreement. The PHS 398 (paper and electronic) is currently approved under 0925–0001; PHS 416–1, 416–5, and PHS 6031 are currently approved under 0925–0002. All forms expire 6/30/2012. Post-award reporting requirements are simultaneously consolidated under 0925–XXXX, and include the new Research Performance Progress Report (RPPR). The PHS 398 application is used by applicants to request Federal assistance funds for traditional investigator-initiated research projects and to request access to databases and other PHS resources. The PHS 416–1 is used only for a change of sponsoring institution application. PHS Fellowship Supplemental Form and agency specific instructions is used in combination with the SF424 (R&R) forms/instructions for Fellowships and is used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The PHS 416–5 is used by individuals to indicate the start of their NRSA awards. The PHS 6031 Payback Agreement is used by individuals at the time of activation to certify agreement to fulfill the payback provisions. *Frequency of response:* Applicants may submit applications for published receipt dates. For NRSA awards, fellowships are activated and trainees appointed. *Affected Public:* Universities and other research institutions; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government. *Type of Respondents:* University administrators and principal professionals. The annual reporting burden is as follows: *Total Estimated Number of Respondents:* 94,326; Estimated Number of Responses per Respondent: 1, Average Burden Hours Per Response: 21.75; *Estimated Total Annual Burden Hours Requested:* 2,051,794. The estimated annualized cost to respondents is $71,812,769.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility,

and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Mikia Currie, email: *curriem@od.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: February 28, 2012.

Joe Ellis,

Director, Office of Policy for Extramural Research Administration, Office of Extramural Research, National Institutes of Health.

[FR Doc. 2012–5305 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, March 22, 2012, 8 a.m. to March 23, 2012, 5 p.m., Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852 which was published in the **Federal Register** on December 9, 2011, 76 FR 76981.

This notice is being amended to change the ending time and date from 5 p.m. March 23, 2012 to 6 p.m. March 22, 2012. The meeting is closed to the public.

Dated: February 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5288 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: March 26, 2012.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Jane K. Battles, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3128, Bethesda, MD 20892–7616, 301–451–2744, *battlesja@mail.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: March 30, 2012.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Betty Poon, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–6891, *poonb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5295 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Integrated Preclinical/Clinical Program for HIV Topical Microbicides.

Date: April 2–3, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5291 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, March 7, 2012, 12:15 p.m. to March 7, 2012, 3:15 p.m., National Institutes of Health, 6116 Executive Boulevard, Room 707,

Rockville, MD 20852 which was published in the **Federal Register** on January 26, 2012, 77 FR 4052.

This notice is being amended to change the title to ''Post-Translationally Modified Proteins as Calibrators.'' The meeting is closed to the public.

Dated: February 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5289 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review ; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology.

Date: March 19–20, 2012

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.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. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5298 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Sickle Cell Disease Program Project Grant Review.

Date: March 20, 2012.

Time: 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Sleep Research Resource Project.

Date: March 21, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Giuseppe Pintucci, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892, 301–435–0287, *Pintuccig@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5303 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Child Psychopathology and Developmental Disabilities.

Date: March 27, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892 301–435–0913, *mark.lindner@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral Microbiology.

Date: March 28, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mechanisms in Molecular Genetics.

Date: March 28, 2012.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl M Corsaro, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Hypertension and Thrombosis.

Date: March 29, 2012.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6183, MSC 7804, Bethesda, MD 20892, 301–495–1213, *espinozala@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5301 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Metabolic Disease and Reproduction.

Date: March 23, 2012.

Time: 10:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Krish Krishnan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; P50 Center for HIV/AIDS Structural Biology.

Date: March 27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Host defense, lung injury and lung molecular biology and epigenetics.

Date: March 27, 2012.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Everett E Sinnett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology, Genetics and Carcinogenesis.

Date: March 27–28, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immune Mechanism.

Date: March 27–29, 2012.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: High throughput Screening Assays for Drug Discovery.

Date: March 28, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ping Fan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomedical Technology Centers: P41 Competitive Revisions.

Date: March 28–29, 2012.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301)451–1323, *assamunu@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–5300 Filed 3–2–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0006]

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: 30-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 April 4, 2012.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2012–0006, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: Rick.Stevens@dhs.gov.* Please include docket number DHS–2012–0006 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—Rick Stevens, 1120 Vermont Ave., Mail Stop 0202, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: DHS S&T PRA Coordinator Rick Stevens (202) 254–8221 (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. *An estimate of the time for an average respondent to respond:* 0.5 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 118.5 burden hours.

Dated: February 28, 2012.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2012–5285 Filed 3–2–12; 8:45 am]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–134; Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Affidavit of Support, Form I–134; OMB Control No. 1615–0014.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on January 13, 2012, at 77 FR 2078, allowing for a 60-day public comment period. USCIS received a comment from one commenter in response to the 60-day notice. A discussion of the comment and USCIS' response are addressed in item 8 of the supporting statement that can be viewed at: *http://www.regulations.gov.*

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged

and will be accepted until April 4, 2012. This process is conducted in accordance with 5 CFR 1320.10.

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 Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: Sunday Aigbe, Chief, Regulatory Products Division, Office of the Executive Secretariat, USCIS, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via email at *USCISFRComment@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov.* When submitting comments by email please make sure to add OMB Control Number 1615–0014 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–134; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection is necessary to determine if at the time of application into the United States, the applicant is likely to become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 90 minutes (1.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 66,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

If additional information is required contact: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, telephone (202) 272–8377.

Dated: February 29, 2012.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–5284 Filed 3–2–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Draft Policy on Consultation with Alaska Native Claims Settlement Act Corporations

AGENCY: Office of the Secretary, Interior

ACTION: Notice of availability and request for comments.

SUMMARY: The Department of the Interior is requesting comments on its draft policy on consultation with Alaska Native Claims Settlement Act corporations.

DATES: Submit comments by April 27, 2012.

ADDRESSES: Send comments on the draft policy to: attn: Alaska Consultation Policy, Office of the Secretary, 1849 C Street NW., Washington, DC 20240; Email: *consultation@doi.gov.* You can request copies of the draft policy by sending a letter or email to one of the above addresses or by calling 202–208–4503. You can also find the draft policy online at *www.doi.gov/tribes/tribal-consultation-policy.cfm*

FOR FURTHER INFORMATION CONTACT: Jennifer Sisk, Department of the Interior, 1849 C Street NW., Washington, DC 20240. Email: *Jennifer_Sisk@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 13175 directs all Federal agencies to ensure consultation and coordination with Indian tribal governments on Federal actions that will affect tribal governments. Under Public Law 108–199, this consultation policy also applies to corporations established under the Alaska Native Claims Settlement Act (ANCSA). Federal agencies are therefore required to consult and coordinate with ANCSA corporations on the same basis as Indian tribes in developing policies that would affect these corporations and their tribal shareholders. To implement these requirements, the Department is proposing and seeking comments on a draft consultation policy to govern all activities that will affect ANCSA corporations. Copies of the draft policy are available at the address given in the **ADDRESSES** section of this notice.

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.

The Department of the Interior proposed policy on consultation with Alaska Native Claims Settlement Act Corporations is set forth below.

Department of the Interior Policy on Consultation With Alaska Native Claims Settlement Act (ANCSA) Corporations

I. Preamble

In compliance with Congressional direction, this Policy creates a framework for consulting with Alaska Native Claims Settlement Act (ANCSA) Corporations. Pursuant to the Alaska Native Claims Settlement Act (ANCSA) of 1971, ANCSA Corporations were established to provide for the economic and social needs, including the health, education and welfare of their Native shareholders. Congress also required that ''[t]he Director of the Office of Management and Budget [and all Federal agencies] shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.'' [1]

[1] Consolidated Appropriations Act, 2004, Public Law 108–199, Div. H. § 161, 118 Stat. 3, 452 (2004) as amended by Consolidated Appropriations Act,

Continued

The Department of the Interior (Department) distinguishes the Federal relationship to ANCSA Corporations from the government-to-government relationship between the Federal government and each federally recognized Indian Tribe, and this Policy will not diminish in any way that relationship and the consultation obligations towards federally recognized Indian Tribes. Recognizing the distinction, the Department is committed to fulfilling its ANCSA Corporation consultation obligations by adhering to the framework described in this Policy. When taking departmental action that has a substantial direct affect on ANSCA Corporations, the Department will initiate consultation with ANSCA Corporations.

II. Guiding Principles

This Policy broadly defines provisions for improving the Department's consultation processes with ANCSA Corporations to the extent that a conflict does not exist with applicable law or regulations. The Department recognizes and respects the distinct, unique, and individual cultural traditions and values of each Alaska Native person and the statutory relationship between ANCSA Corporations and the Federal Government. When concerns expressed by Indian Tribes and ANCSA Corporations substantively differ, Departmental officials shall be mindful of Indian Tribes' right to self-governance and Tribal sovereignty.

Consultation between the Department and ANCSA Corporations will involve appropriate Departmental officials and appropriate ANCSA Corporation officials. The appropriate Departmental officials are knowledgeable about the matters at hand, are authorized to speak for the Department, and exercise delegated authority in the disposition and implementation of an agency action. The appropriate Departmental officials will identify consulting parties early in the planning process and provide a meaningful opportunity for ANCSA Corporations to participate in the consultation policy as described in Section VII of this Policy. Department officials will make the effort to fully participate in the consultation process, ensure continuity, and demonstrate commitment to the process.

Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. The process creates an opportunity for equal input from all affected ANCSA Corporations. Federal consultation that is meaningful, effective, and conducted in good faith makes the Department's operation and governance practices more efficient. To that end, Bureaus and Offices will seek and promote cooperation and participation between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with ANCSA Corporation Implications. Efficiencies that derive from including ANCSA Corporations in the Department's decision-making processes through consultation will help to ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of ANCSA Corporation input.

III. Definitions

Definitions of terms provided in the Department of the Interior Policy on Consultation with Indian Tribes apply to this Policy. Additional terms are defined in this section.

Departmental Action with ANCSA Corporation Implications—Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an ANCSA Corporation, including but not limited to:

1. ANCSA Corporation land, water areas and resources;
2. The ability of an ANCSA Corporation to participate in Departmental programs for which it qualifies.

This term, however, does not include matters that are in litigation or in settlement negotiations, or matters for which a court order limits the Department's discretion to engage in consultation.

ANCSA Corporation—Any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act.[2]

ANCSA Corporation Official or Designee—An official designated in writing by an ANCSA Corporation.

IV. Accountability and Reporting

The provisions in Section IV, entitled Accountability and Reporting, of the Department of the Interior Policy on Consultation with Indian Tribes, shall apply to this Policy, with adjustments as necessary to account for the unique status, structure, and interests of ANCSA Corporations as appropriate and allowable.

V. Training

The provisions in Section V, entitled Training, of the Department of the Interior Policy on Consultation with Indian Tribes shall apply to this Policy, with adjustments as necessary to account for the unique status, structure, and interests of ANCSA Corporations as appropriate and allowable.

VI. Innovative and Effective Consultation Practices

The provisions in Section VI, entitled Innovative and Effective Consultation Practices, of the Department of the Interior Policy on Consultation with Indian Tribes shall apply to this Policy, with adjustments as necessary to account for the unique status, structure, and interests of ANCSA Corporations as appropriate and allowable.

VII. Consultation Guidelines

The provisions in Section VII, entitled Consultation Guidelines, of the Department of the Interior Policy on Consultation with Indian Tribes, shall apply to this Policy, with adjustments as necessary to account for the unique status, structure, and interests of ANCSA Corporations as appropriate and allowable.

VIII. Supplemental Policies

Bureaus and Offices, in collaboration with the Tribal Governance Officer (TGO), shall review existing policies that may be impacted by this Policy. All existing policies shall conform to this Policy and, where necessary, a Bureau or Office may develop a new policy in order to conform to this Policy.

Departmental entities that are not Bureaus and Offices may develop policies consistent with this Policy and in coordination with the TGO.

IX. Disclaimer

Except to the extent already established by law, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person. The Department also does not waive by virtue of this Policy any applicable privilege that it may hold.

Dated: February 28, 2012.

David J. Hayes,

Deputy Secretary of the Interior.

[FR Doc. 2012–5282 Filed 3–2–12; 8:45 am]

BILLING CODE 4310–10–P

2005, Public Law. 108–447, Div. H., Title V. § 518, 118 Stat. 2809, 3267 (2004).

[2] 43 U.S.C. 1601 *et seq.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2011–N210; 1265–0000–10137–S3]

Malheur National Wildlife Refuge, Harney County, OR; Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and draft environmental impact statement (EIS) for the Malheur National Wildlife Refuge (NWR or refuge), located in Harney County, Oregon, for public review and comment. In the draft CCP and EIS, we describe alternatives, including our preferred alternative, for managing the refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, please send your written comments by May 4, 2012.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents.

Email: *FW1PlanningComments@fws.gov.* Include ''Malheur NWR DCCP/EA'' in the subject line.

Fax: Attn: Tim Bodeen, Project Leader, (541) 493–2405.

U.S. Mail: Tim Bodeen, Project Leader, Malheur National Wildlife Refuge, 36391 Sodhouse Lane, Princeton, OR 97221.

Agency Web Site: Download a copy of the document at *http://www.fws.gov/pacific/planning.*

In-Person Viewing or Pickup: Call (541) 493–2612 to make an appointment (necessary for viewing or pickup only) during regular business hours at Malheur National Wildlife Refuge, 36391 Sodhouse Lane, Princeton, OR 97221.

For more information on locations for viewing the documents, see ''Public Availability of Documents'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Tim Bodeen, Project Leader, Malheur National Wildlife Refuge, phone (541) 493–2612.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Malheur NWR. We started this process through a notice in the **Federal Register** (74 FR 31046; June 29, 2009).

Malheur National Wildlife Refuge was established on August 18, 1908, by President Theodore Roosevelt as the Lake Malheur Bird Reservation. The refuge was originally set aside to prevent plume hunters from decimating colonial nesting bird populations. It protected unclaimed lands encompassed by Malheur, Mud, and Harney Lakes ''as a preserve and breeding ground for native birds.'' The refuge was expanded to include the Blitzen Valley in 1935 and the Double-O Unit in 1941. Refuge purposes include ''* * * a refuge and breeding ground for migratory birds and other wild life * * *'' and ''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.''

The refuge consists of over 187,000 acres of open water (marsh, river, and stream), wetlands, springs, riparian areas, irrigated meadows and grain fields, and shrub-steppe uplands.

With its abundance of water in an otherwise arid landscape, the refuge attracts a significant portion of the Pacific Flyway's bird population during spring migration. The refuge is named under several flyway and regional bird conservation plans and is designated as an Important Bird Area. Populations of breeding waterfowl and waterbirds on Malheur Lake and other refuge wetlands have dropped substantially compared to historic levels, a decline that is widely attributed to the high populations of non-native common carp now living in the lake and adjacent water bodies.

We announce the availability of the Malheur NWR draft CCP/EIS in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We prepared an environmental analysis of impacts, which we included in the draft CCP/EIS.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify compatible wildlife-dependent recreational opportunities available to the public, including opportunities for compatible hunting, fishing, wildlife observation and photography, environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

CCP Alternatives We Are Considering

We are considering three CCP alternatives for managing the refuge. The draft CCP/EIS provides a full description of each alternative, summarized below.

Alternative 1 (No Action)

Under Alternative 1, the refuge would continue current practices. Malheur, Harney, and Mud Lakes would continue to remain largely unmanaged, allowed to flood and retreat according to annual weather fluctuations, and subject to degradation caused by large carp populations. Other lake and wetland habitats in the Blitzen Valley and Double-O Units would be managed using rotational flooding and dewatering to enhance productivity for waterfowl and to control carp.

Together with the six dams that assist in water diversions, existing fish screens and ladders on the Blitzen River would remain in place. Native fish passage structures, maintenance of existing carp barriers, and riparian vegetative rehabilitation efforts would continue. Additional riverine enhancement would consist of isolated, small-scale, in-stream improvements when resources are available. Much of the carp control effort would continue to be focused on information gathering under this Alternative.

Habitat management in meadows, marshes, and uplands would continue as currently practiced. Current meadow and marsh habitat objectives address the needs of various waterbirds, shorebirds, and waterfowl by providing conditions necessary for nesting, pairing, and migration. Flood irrigation with diversions from the river March 1 through July 25 would continue to be practiced on meadow habitats. Plant litter, which becomes detrimental to some wildlife species needs over time, would continue to be reduced through the use of prescribed burning, haying on or after August 10, and rakebunch grazing occurring on or after September 1. Approximately 40 percent of meadows would continue to be hayed or grazed annually. The current trend of

emergent vegetation encroachment into wet meadows would continue due to the favorable conditions that extended flood irrigation creates for common and hybrid cattails.

Public uses, including compatible wildlife observation, photography, interpretation, environmental education, hunting, and fishing would continue with the current facilities and programs in place. No new public use facilities would be developed. Areas currently closed to public access, which include nearly all areas not on the main roads, would remain closed in order to provide sanctuary.

Cultural resources, specifically archaeological resources, would continue to be considered during project planning for all refuge programs. Historic resources would continue to be stabilized and restored as funding becomes available. Paleontological resources would continue to be protected; interpretation of archaeological and historic resources would remain the same.

Alternative 2 (Proposed Action)

Habitat Management: Under Alternative 2, our preferred alternative, the primary focus and top priority would be to improve the aquatic health of lakes and wetlands, primarily through aggressive control of common carp. As turbidity decreases, the submergent vegetation and associated invertebrate species become more abundant, benefitting a variety of waterbirds, waterfowl, and shorebirds.

A variety of assessment and control tools may be used with the aid of partners to strive to meet a reduced carp population objective of 100 pounds per acre in Malheur, Harney, and Mud Lakes.

Under Alternative 2, the refuge would initiate steps toward a comprehensive riverine/wetland rehabilitation plan. As funding becomes available, the refuge would complete necessary assessments and pilot projects. If, during the life of this CCP, our carp threshold objective of 100 pounds per acre is met and maintained, more staff time and resources would be directed to river rehabilitation efforts.

Wetlands and terrestrial habitats would be managed for the life history needs of focal species (identified in the plan), with a strong emphasis on flexibility. Tools would include, but not be limited to, late summer haying and autumn/winter rakebunch grazing in order to meet the foraging needs of early-arriving wildlife species. In the warm growing season, tools would include highly prescriptive grazing, mowing, farming, and extended dewatering to reclaim acres lost to invasive plants, such as common cattail and reed canarygrass, or to rehabilitate communities that have transitioned beyond desired conditions.

Public Uses: Viewing overlooks, elevated viewing platforms, and photography blinds would be upgraded and developed. The refuge would maintain and replant cottonwood trees and other trees and shrubs at six historic sites for rare and incidental passerine habitat, an important part of the viewing experience for advanced birders. Trails would be added; several trails would be upgraded or built to promote accessibility. Docent-led tours would occur approximately monthly at different locations on the refuge, and would include opportunities for guided kayak and canoe tours on Malheur Lake. A stronger emphasis would be placed on modern media for interpretation. The George Benson Memorial Museum would be enhanced, and additional outdoor interpretive panels would be developed and sited. Special events and public presentations by staff and volunteers would be expanded. An outdoor environmental education shelter and learning area at Refuge Headquarters would be built.

Increased vehicle access would be provided under this Alternative. Visitors would be permitted to drive year-round to Krumbo Reservoir. Up to eight outdoor welcome and orientation panels would be provided to guide visitors. Visitor amenities, such as picnic tables, shelters, and vault toilets, would be upgraded and provided in new locations. An enlarged visitor contact station and gift shop at Headquarters and a seasonal contact station at P Ranch would be built to improve contact between visitors and refuge staff and volunteers.

The upland game hunt would open the fourth Saturday of October, approximately 3 weeks earlier than the current program. The northern part of Malheur Lake and the Buena Vista hunt unit would remain open under existing regulations. New waterfowl hunt areas would be provided (approximately doubling or tripling the existing hunt area) by opening a portion of the south-central area of Malheur Lake, adding a new boat launch at headquarters, and by opening the Buena Vista Unit to waterfowl hunting. The season for the new waterfowl hunt units would extend from the fourth Saturday of October to the end of the State waterfowl season. The existing youth hunt would be promoted, and improvements would be made to the Saddle Butte access. In partnership with potential users, the refuge would also support adding accessible facilities for disabled waterfowl hunters in the Buena Vista hunt unit.

Existing fishing opportunities at Krumbo Reservoir, along the upper Blitzen River, the southern portion of East Canal, and Mud and Bridge Creeks would continue, and the expanded vehicle access mentioned above would provide greater accessibility to fishing sites. In addition, the refuge would create a new pedestrian crossing at Bridge Creek and a new late summer bank fishing opportunity on the Blitzen River from Sodhouse Lane to the bridge on the Boat Landing Road. Orientation and information would be added to fishing areas. At Krumbo Reservoir, stocking of triploid rainbow trout would continue, and a genetic introgression study on redband trout conducted.

The Service would pursue a land exchange with BLM to help consolidate land management between the agencies for areas within and immediately adjacent to the Malheur Refuge. The refuge would continue to rely heavily on volunteers, with an emphasis on increasing recruitment and retention.

Cultural and Paleontological Resource Management: These programs would be strengthened by the development, in cooperation with partners, of step-down management plans for historic, archaeological, and paleontological resources. Interpretation of historic sites would be expanded. Opportunities for Native Americans to collect plant materials for traditional uses would be expanded. Monitoring and inventory of archaeological resources would increase.

Sustainable Practices: The refuge would seek to become energy independent and carbon neutral, and would continue to emphasize partnerships to maximize adaptive management.

Inventory and Monitoring: Step-down inventory and monitoring plans would be developed, emphasizing focal species and national monitoring efforts. A geodatabase would be created to track data collected under these plans.

Alternative 3

Habitat Management: Alternative 3 would enact nearly all of the same habitat management practices as Alternative 2. The primary difference is that the refuge would place a co-equal emphasis on both aquatic health (carp control) and completing a comprehensive riverine/wetland rehabilitation plan. The intended eventual outcomes of the riverine plan and implementation actions would be enhanced habitat for native fishes, enhanced water quality within the river,

greater floodplain connectivity, and improved extent and quality of riparian habitat. A detailed assessment of the geomorphology, ecology, hydrology, and management function of the Blitzen River would occur for the first 7 years. The next 5 years would be used for implementing and monitoring pilot projects to gain a better understanding of system response to enhancement activities. Using results from the pilot projects, a comprehensive plan would be crafted to guide river rehabilitation efforts. Because the river effort would proceed slowly and would likely not be fully implemented until the end of the 15-year timeframe, no discernible difference would exist between Alternatives 2 and 3 with regard to the management of other wetland and terrestrial habitats within the Blitzen Valley and Double-O Units.

Public Uses: Management under Alternative 3 for compatible wildlife viewing, photography, and welcome and orientation would be similar to Alternative 2, but there would be less emphasis on developed facilities and more emphasis on self-guided and off-trail experiences.

The Blitzen Valley auto tour route (Center Patrol Road) would be seasonally closed to vehicle access (August 15 to the fourth Friday of October in the Buena Vista unit, and August 15 to March 1 in the P Ranch unit) and would be redesigned into two or three year-round shorter auto tour routes. Walk-in free-roam access along the closed portions of the Center Patrol Road and dike tops in both units would be allowed during the periods listed above to provide opportunities for self-guided and off-trail experiences. Vehicle access to Krumbo Reservoir would be seasonal; walk-in access would be allowed November 1 to the fourth Friday of April. Year-round vehicle access would be allowed on the Boat Landing Road near Refuge Headquarters to the Malheur Lake elevated viewing platform. Spur and loop trails of one mile or more and a number of specific viewing facilities such as overlooks and platforms would be added with limited investment. Existing trails would be upgraded to promote accessibility.

The historic Audubon photography blind at Refuge Headquarters Display Pond would be restored. In free-roam areas, temporary photography blinds would be permitted. The refuge would maintain and replant trees and shrubs at four historic sites to provide habitat used by rare and incidental passerines.

The upland game and the waterfowl hunts would be managed as under Alternative 2, except a Buena Vista waterfowl hunt would not be permitted. However, a youth hunt opportunity on the State-designated weekend would be explored for the Double-O unit.

Fishing opportunities and management would be the same as Alternative 2, but less vehicle access to fishing areas compared to Alternative 2 may limit the number of people engaging in this use.

Environmental education, interpretation (including docent-led tours), volunteer programs, potential land exchange with BLM, cultural and paleontological management, energy independence, and inventory and monitoring would be managed the same as under Alternative 2.

Public Availability of Documents

In addition to the information in **ADDRESSES**, printed copies of the document will be available for review at the following libraries:

- Harney County Library, 80 West ''D'' Street, Burns, OR 97720.
- Bend Public Library, 601 NW Wall Street, Bend, OR 97701.

Next Steps

After this comment period ends, we will analyze the comments and address them in the final CCP/EIS. A record of decision will follow the final CCP/EIS.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may become publicly available at any time. While you can ask us in your comment to withhold your identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: Nov 8, 2011.

Robyn Thorson,

Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2012–5297 Filed 3–2–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTY01000.L16100000.DP0000]

Notice of Intent To Prepare a Master Leasing Plan, Amendments to the Resource Management Plans for the Moab and Monticello Field Offices, and an Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM), Moab and Monticello Field Offices, Utah, intend to prepare a Master Leasing Plan (MLP), amendments to the 2008 Moab and Monticello Resource Management Plans (RMPs), and a single environmental impact statement (EIS) to consider leasing for oil and gas and potash on about 783,000 acres of public lands. By this notice, the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the MLP/plan amendments and associated EIS. Comments on issues may be submitted in writing prior to the end of the scoping period which is 60 days after the date of publication of this notice in the **Federal Register**. During the scoping period, it is anticipated that scoping meetings will be held in Moab, Monticello, and Salt Lake City, Utah. The date(s) and locations(s) of the scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/21jd.* Additional opportunities for public participation will be provided upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Master Leasing Plan and plan amendments by any of the following methods:

- *Email: BLM_UT_Comments_2@blm.gov*
- *Mail:* BLM, Moab Field Office, 82 East Dogwood, Moab, Utah 84532, Attention: Brent Northrup
- *Fax:* (435) 259–2106

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Brent Northrup, Project Manager, BLM Moab Field Office, 82 East Dogwood, Moab, UT 84532, telephone (435) 259–2151 or email *Brent_Northrup@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM will prepare a MLP in accordance with

the BLM's Washington Office Instruction Memorandum No. 2010–117. The MLP process will provide additional planning and analysis for areas prior to new leasing of oil, gas, and potash. The MLP will enable the Moab and Monticello Field Offices to (1) evaluate in-field considerations, such as optimal parcel configurations and potential development scenarios; (2) identify and address potential resource conflicts and environmental impacts from development; (3) develop mitigation strategies; and (4) consider a range of new constraints, including prohibiting surface occupancy or closing certain areas to leasing. The MLP process could result in new leasing stipulations and development constraints which would require amendments to the Moab and Monticello RMPs completed in 2008. The EIS will analyze likely mineral development scenarios and land use plan alternatives with varying mitigation levels for leasing.

The planning area covers about 783,000 acres in east-central Utah, encompassing west-central Grand County south of Interstate 70 and a portion of northern San Juan County. The western boundary is along the Green River and the northeastern edge of Canyonlands National Park. To the south of Moab, the boundary includes the area between Canyonlands National Park and U.S. Highway 191. The planning area encompasses a mix of land uses including a variety of recreation uses, livestock grazing, potash production, and oil and gas development. Interest in oil, gas, and potash exploration and development is high in the area, as evidenced by the recent submission of over 170 potash prospecting permit applications encompassing over 350,000 acres and expressions of interest to lease oil and gas encompassing over 120,000 acres within the planning area.

Planning issues can generally be stated as resource management issues and opportunities that the BLM needs to address to ensure it is fulfilling its multiple use resource management mission. The potential decisions in any proposed land use plan amendments could affect numerous other resources. The preliminary resource issues currently identified by a BLM interdisciplinary team include the following: air quality and climate change, cultural resources, lands and realty, paleontological resources, recreation, riparian resources, socioeconomics, soil and water, special status species, special designations (National Scenic and Historic Trails), vegetation, visual resources, wildlife and fisheries, and wilderness characteristics. Planning criteria are the constraints or ground rules that guide and direct the development of the land use plan amendments and determine how the planning team approaches development of alternatives and ultimately, selection of a Preferred Alternative. Planning criteria ensure that plans are tailored to the identified issues and ensure that unnecessary data collection and analyses are avoided. Preliminary planning criteria include: (1) Any plan amendments will focus on mineral leasing decisions only, (2) any plan amendments will recognize valid existing rights, (3) lands addressed in plan amendments will be public lands (including split estate lands) managed by the BLM, (4) the BLM will use a collaborative and multi-jurisdictional approach, where possible, to jointly determine how mineral leasing will be managed, (5) as described by law and policy, the BLM will strive to ensure that its management decisions are as consistent as possible with other planning jurisdictions within the planning area boundaries, (6) development scenarios will be prepared for oil and gas and potash based on historical, existing and projected levels, (7) management decisions will consider a range of alternatives that focus on development scenarios and varying mitigation levels based on the relative values of resources, (8) the socioeconomic impacts of the alternatives will be addressed, (9) the BLM will use current scientific information, research, technologies, and results of inventory, monitoring, and coordination to determine appropriate decisions for mineral leasing, and (10) the BLM will coordinate with Native American Tribal Governments to identify sites, areas, and objects important to their cultural and religious heritage within the planning area.

Note: Planning issues and criteria outlined above are preliminary at this stage and will likely be modified as the public becomes more fully involved.

Federal, state, local, and tribal agencies, along with other stakeholders that may be interested in or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

You may submit comments in writing on issues and planning criteria to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments before the end of the scoping period. The BLM will provide the public with the results of scoping through our Web site and by newsletter.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2(c).

Shelley J. Smith,

Actg. Associate State Director.

[FR Doc. 2012–5177 Filed 3–2–12; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVSO3000.L71220000.EU0000. LVTFF1101700; N–86294; 11–08807; MO#4500020396; TAS: 14X5232]

Notice of Realty Action: Modified-Competitive Sale of Public Land in Pahrump, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer one parcel of public land totaling approximately 120 acres in Pahrump, Nye County, Nevada, by modified-competitive, sealed-bid sale at not less than the appraised fair market value (FMV) of $645,000. The sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) and other BLM land sale and mineral conveyance regulations.

DATES: Interested parties may submit written comments regarding the proposed sale and the environmental assessment (EA) until April 19, 2012.

Sealed bids may be mailed or delivered to the BLM Pahrump Field Office, at the address below, beginning April 19, 2012. Sealed bids must be received no later than 4:30 p.m. Pacific Time, May 4, 2012 in accordance with the sale procedures. The BLM will open the sealed bids on May 7, 2012 at the BLM Pahrump Field Office.

ADDRESSES: Mail written comments to the BLM Pahrump Field Manager,

Pahrump Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Jill Pickren, (702) 515–5194, or email: *jill_pickren@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Nye County Board of Commissioners supports the Spring Mountain Raceway, LLC's request for the disposal of public land by direct sale or modified-competitive sale within the Town of Pahrump. The Nye County Manager's Office requested the BLM to consider and make a determination whether to conduct a direct or modified-competitive sale of the 120-acre parcel favoring Spring Mountain Raceway, LLC. The public land directly abuts property owned by Spring Mountain Raceway, LLC, along State Route 160 near Gamebird Road in Nye County.

The following lands are proposed for disposal.

Mount Diablo Meridian

T. 20 S., R. 54 E.,
Sec. 34, W½NW¼ and NW¼SW¼.

The area described contains 120 acres, more or less, in Nye County, Nevada.

The BLM determined that a modified-competitive method of sale would be the appropriate method for disposal of this parcel. This sale meets the criteria found in 43 CFR 2710.0–3(a)(2) because this disposal serves important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on other lands.

According to Nye County, the Spring Mountain Raceway, LLC, would develop certain private businesses on the parcel proposed for sale and would provide infrastructure, such as water and sewer lines, to the property at an estimated expense of $2 million. This extension of utility services would also serve the undeveloped county fairground site directly across State Route 160, from the parcel. Spring Mountain Raceway, LLC, proposes to construct a racetrack on the requested parcel that would be open to the public. The only public racetrack in Pahrump was permanently closed in 2007 and the nearest public racing venue is the Death Valley racetrack about 30 miles away in Amargosa Valley, Nevada. Along with water and sewer lines, roadways would be constructed to provide public access to the property and the developments. The authorized officer has identified Spring Mountain Raceway, LLC, as the designated bidder for this parcel.

The use of the modified-competitive sale method is consistent with 43 CFR 2711.3–2(a)(1)(i) because the authorized officer has determined it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

The proposed FLPMA sale parcel, N–86294, is being analyzed in environmental assessment number DOI–BLM–NV–S010–2010–0116–EA. Upon publication of this notice the EA is available at the BLM Pahrump Field Office for public review and comments. Only written comments will be considered properly filed. Submit comments at the address in the **ADDRESSES** section.

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.

Information concerning the sale, appraisal, reservations, sale procedures and conditions, CERCLA, map delineating the proposed sale parcel, mineral potential report, EA, and other environmental documents will be available for review at the BLM Pahrump Field Office, or by calling (702) 515–5000 and asking to speak to a member of the sales team.

This public sale is in conformance with the BLM Las Vegas Resource Management Plan (RMP), approved by Record of Decision on October 5, 1998. The BLM has determined that the proposed action conforms to the Las Vegas RMP and Final Environmental Impact Statement decision, LD–1 under the authority of the FLPMA to dispose of public lands.

Sale Segregation: Publication of this notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining laws, except sale under the FLPMA. The segregation will terminate: (i) Upon issuance of a patent or other document of conveyance to such lands; (ii) Upon publication in the **Federal Register** of a termination of the segregation; or (iii) At the end of 2 years from the date of this publication in the **Federal Register**, whichever occurs first.

On publication of this notice and until completion of the sale, the BLM is no longer accepting land-use applications affecting the parcel identified for sale. However, land-use applications may be considered after completion of the sale if the parcel is not sold. The parcel may be subject to land-use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of a parcel. Encumbrances of record that may appear in the BLM public files for the parcel proposed for sale are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday at the BLM Pahrump Field Office except during federally recognized holidays.

The parcel is subject to limitations prescribed by law and regulation, and prior to patent issuance, a holder of any right-of-way within the parcel may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or an easement. In accordance with regulations at 43 CFR 2807.15(b), the BLM notified the valid existing right-of-way holders by letter of their ability to convert their rights-of-way to perpetual rights-of-way or easements. None of the holders requested conversion of their current authorizations, so the BLM will continue to administer their rights-of-way as authorized after the sale.

Terms and Conditions: Certain minerals for the parcel will be reserved to the United States in accordance with the BLM's approved Mineral Potential Report, dated March 22, 2000, and updated June 23, 2011. An offer to purchase the parcel will constitute an application for mineral conveyance of the ''no known value'' mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50 non-refundable filing fee for processing the conveyance of the ''no known value'' mineral interests which will be sold simultaneously with the surface interests.

The following numbered terms, conditions, and reservations will appear on the conveyance documents for these parcels:

1. All saleable mineral deposits in the lands are reserved to the United States, its permittees, licensees, and lessees together with the right to prospect for, mine, and remove such under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The parcel is subject to valid existing rights;

4. Right-of-way N–46682 for waterline purposes granted to Central Nevada Utilities, its successors or assigns pursuant to the Act of October 21, 1976 (43 U.S.C. 1761) is reserved;

5. Right-of-way Nev-057100 for power line purposes granted to Valley Electric Association, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761) is reserved;

6. Right-of-way Nev-059100 for power line purposes granted to Valley Electric Association, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761) is reserved;

7. The parcel is subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans;

8. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupation of the patented lands will be included;

9. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of the parcel will not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA.

Sale procedures: The designated bidder must appoint an authorized representative for this sale by submitting in writing a notarized document which also identifies the level of capacity given to the authorized representative. The authorized representative of the designated bidder must be present at the sale. If the authorized representative does not submit the highest bid, the authorized representative will have the opportunity to meet and accept the high bid as the purchase price of the parcel. Should the authorized representative refuse to meet the high bid, the party submitting the high bid will be declared the successful bidder in accordance with regulations at 43 CFR 2711.3–2(c). Consistent with 43 CFR 2711.3–2 (e), acceptance or rejection of any offer to purchase shall be in accordance with the procedures set forth in 43 CFR 2711.3–1(f) and (g).

Sealed bids will be presented for the sale parcel. Sealed-bid envelopes must be clearly marked on the front lower left corner with: ''SEALED BID BLM LAND SALE'' and the identification number for the sale parcel ''BLM SERIAL NUMBER N–86294.''

Each sealed bid shall be accompanied by a cashier's check, certified check, or U.S. postal money order, and made payable in U.S. dollars to ''Department of the Interior—Bureau of Land Management'' for not less than 20 percent of the amount bid. Personal or company checks will not be accepted. The sealed-bid envelope shall also include a completed and signed Certificate of Eligibility.

Sealed bids will be opened and recorded to determine the high bidder on May 7, 2012, 10 a.m., Pacific Time at the Pahrump Field Office. The highest bidder among the qualified bids received for the sale will be announced under 43 CFR 2711.3–1(d). Following the end of the sale, all bid deposits will be returned to the unsuccessful bidders if present or by certified mail. If the winning bidder defaults on the parcel, the BLM may retain the bid deposit and cancel the sale. If the high bidder is unable to consummate the transaction for any reason, the second-highest bid may be considered for award. The BLM will send the successful bidder a high-bidder letter with detailed information for full payment.

Pursuant to regulations 43 CFR 2711.2, bidders must be (1) United States citizens 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) An entity including, but not limited to associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) A State, State instrumentality, or political subdivision authorized to hold real property. United States citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to the BLM within 30 days from receipt of the high-bidder letter shall result in cancellation of the sale and forfeiture of the bid deposit.

Within 30 days of the bid opening, the BLM will, in writing, either accept or reject all bids received. No contractual, or other rights against the United States, may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the Pahrump Field Office prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale.

All name changes and supporting documentation must be received at the BLM Pahrump Field Office 30 days from the date on the high-bidder letter by 4:30 p.m., Pacific Time. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change on the Certificate of Eligibility to the BLM Pahrump Field Office in writing. Certificates of Eligibility are available at the Pahrump Field Office and on the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.*

The remainder of the full bid price for the parcel must be paid prior to the expiration of the 180th day following the close of the sale. Payment must be submitted in the form of a certified check, postal money order, bank draft or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.'' Personal or company checks will not be accepted.

Arrangements for electronic fund transfer to the BLM for payment of the balance due must be made a minimum of 2 weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the full bid price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of the exchange is the bidder's responsibility in accordance with Internal Revenue Service's regulations. The BLM is not a party to any 1031 Exchange.

All sales are made in accordance with and subject to the governing provisions of law and applicable regulations.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

The parcel, if not sold by modified-competitive, sealed-bid sale, may be identified for sale at a later date without further legal notice.

In order to determine the FMV certain assumptions may have been made concerning the attributes and limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the bidder's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the bidder's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Bidders should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any valid adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR part 2711.

Mark R. Spencer,

Field Manager, Pahrump Field Office.

[FR Doc. 2012–5172 Filed 3–2–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000. 14300000. EU0000. LXSS129F0000 241A; N–88014; 11–08807; MO# 4500022284; TAS: 14X1109]

Notice of Realty Action: Direct Sale of Public Land in Esmeralda County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for disposal utilizing direct sale procedures, one parcel of public land totaling 5 acres, in Goldfield, Esmeralda County, Nevada. This parcel is being proposed for non-competitive (direct) sale to Esmeralda County under the provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and BLM sales and mineral conveyance regulations for the appraised fair market value of $15,500.

DATES: Written comments regarding the proposed sale must be received by the BLM on or before April 19, 2012.

ADDRESSES: Written comments concerning the proposed sale should be sent to Thomas J. Seley, Field Manager, BLM Tonopah Field Office, 1553 S. Main Street, P.O. Box 911, Tonopah, NV 89049.

FOR FURTHER INFORMATION CONTACT: Alan Buehler, Supervisory Geologist, BLM Tonopah Field Office, 1553 S. Main Street, P.O. Box 911, Tonopah, Nevada 89049, 775–482–7800. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following described public land lies within the Town of Goldfield, is being proposed for direct sale to Esmeralda County, and is legally described as:

Mount Diablo Meridian

T. 3 S., R. 42 E.,

Sec. 3, lot 14.

The area described contains 5 acres, more or less, in Esmeralda County.

On March 5, 2012, the above described land will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Upon publication of this Notice of Realty Action and until completion of the sale, the BLM will no longer accept land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on March 5, 2014, unless extended by the BLM Nevada State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Consistent with Section 203 of the FLPMA, a tract of public land may be sold where, as a result of approved land use planning, sale of the tract meets the disposal criteria of that section. The public land is identified as suitable for disposal in the BLM Tonopah Resource Management Plan (RMP), Appendix 14, pages A–46 through A–49, dated October 2, 1997, and is not needed for any other Federal purpose. A portion of the proposed sale area (4 acres) is currently authorized by right-of-way (ROW) N–31308 for a water facility to Esmeralda County. Disposal would alleviate the continued administration of this land use authorization. Regulations contained in 43 CFR 2711.3–3 make allowances for direct sales when a competitive sale is not appropriate and the public interest would be best served by a direct sale. The proposed action is consistent with 43 CFR part 2710, the objectives, goals, and decisions of the RMP such as the Lands and Realty objective to make lands available for community expansion and private economic development and to increase the potential for economic diversity.

The land meets the criteria for direct sale under FLPMA, Section 203(a)(3) and 43 CFR 2710.0–3(a)(2), where the disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values. The parcel will be offered through direct sale

procedures pursuant to 43 CFR 2711.3–3. The direct sale would not change the status quo in that no other land uses are expected for these lands.

The BLM prepared an environmental assessment (EA), DOI–BLM–NV–B020–2010–0154–EA, and provided a 30-day public comment period. No comments were received and a finding of no significant impact and decision record was signed on July 26, 2011. The EA, Environmental Site Assessment, Mineral Potential Report, and map are available for review at the BLM Tonopah Field Office at the address above and online at the following Web site: *www.blm.gov/nv/st/en/fo/battle_mountain_field.html.*

Esmeralda County has expressed an interest in purchasing, by direct sale, the surface and subsurface estate of these lands to be used as the permanent site of a water treatment facility for the Town of Goldfield, Nevada. As proof of this interest, Esmeralda County approved Resolution No. 09–R–16, ''Resolution Regarding Purchasing Property from the Bureau of Land Management for the Goldfield Water Treatment Facility'' on October 6, 2009. The proposed sale site has been used by the county since 1981 as a water storage and distribution facility under ROW N–31308. The proposed area is being considered for a direct sale by the BLM because, among other things, it would serve an important local public objective of facilitating Esmeralda County's efforts to construct new facilities and bring its local water supply into compliance with the Safe Drinking Water Act. Part of the water compliance process would require addressing higher than acceptable levels of arsenic and other substances. A direct sale would therefore also serve the purpose of removing the lands from Federal ownership and mitigating any potential hazardous materials liability to the United States in the future.

The public land would not be offered for sale until at least May 4, 2012, at the appraised market value of $15,500. A copy of the approved appraisal is available at the address above. The patent, if issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. The parcel is subject to all valid existing rights;

3. Easement N–89535 (N–89268) for aerial line purposes granted to Sierra Pacific Power Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

4. Easement N–89536 (N–73706) for fiber optic line purposes granted to Nevada Bell, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

The purchaser, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party arising out of, or in connection with, the patentee's use, occupancy or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations that are now, or in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above-described land has been examined and no evidence was found to indicate that any hazardous substances has been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property. To the extent required by law, all parcels are subject to the requirements of Section 120(h) of CERCLA.

No representation, warranty, or covenant of any kind, express or implied, will be given or made by the United States, its officers or employees as to access to or from the above described parcel of land, the title to the land, whether or to what extent the land may be developed, its physical condition or its past, present or potential uses, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The disposal parcel contains no known mineral values pursuant to 43 CFR 2720.0–6 and 2720.2(a). The BLM Mineral Potential Report dated December 16, 2010, recommends that the United States convey all mineral rights to Esmeralda County; therefore, the BLM proposes that the conveyance of the Federal mineral interests occur simultaneously with the sale of the land. In addition to the appraised fair market value, the purchaser, Esmeralda County, will be required to pay a $50 non-refundable filing fee for conveyance of the available mineral interests. The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 20 percent of the purchase price, the $50 filing fee for conveyance of mineral interests, and for payment of publication costs. The purchaser must remit the remainder of the purchase price within 180 days from the date the sale offer is received. Payments must be by certified check, U.S. postal money order, bank draft, or cashier's check, and made payable to the U.S. Department of the Interior—BLM or conduct an electronic funds transfer. Arrangements for electronic funds transfer to the BLM for the balance due shall be made a minimum of 2 weeks prior to payment. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited.

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While

you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2(a) and (c)).

Thomas J. Seley,

Field Manager, Tonopah.

[FR Doc. 2012–5176 Filed 3–2–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–BOHA–0112–9479; 1727–SZS]

Boston Harbor Islands National Recreation Area Advisory Council; Notice of Public Meeting

AGENCY: Boston Harbor Islands National Recreation Area, National Park Service, Department of the Interior.

ACTION: Notice of annual meeting.

SUMMARY: Notice is hereby given that a meeting of the Boston Harbor Islands National Recreation Area Advisory Council will be held on Wednesday, March 7, 2012, at 6 p.m. to 8 p.m. at Northeastern University, Forsyth Street, Shillman Hall, Room 220, Boston, MA.

The agenda will include: A presentation about the geology of Boston Harbor Islands; elections of officers; bylaws review; park update; and, public comment. The meeting will be open to the public. Any person may file with the Superintendent a written statement concerning the matters to be discussed. Persons who wish to file a written statement at the meeting or who want further information concerning the meeting may contact Superintendent Bruce Jacobson at Boston Harbor Islands, 408 Atlantic Avenue, Suite 228, Boston, MA 02110, or (617) 223–8667. 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.

DATES: March 7, 2012, at 6 p.m.

ADDRESSES: Northeastern University, Forsyth Street, Shillman Hall, Room 220, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Superintendent Bruce Jacobson, (617) 223–8667.

SUPPLEMENTARY INFORMATION: The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands NRA.

Dated: February 21, 2012.

Bruce Jacobson,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 2012–5192 Filed 3–2–12; 8:45 am]

BILLING CODE 4310–8G–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS—OIA—WASO—0112—DTS:9376; 0050–673]

U.S. Nominations to the World Heritage List; 15-Day Notice of Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: This is a First Notice for the public to comment on the next potential U.S. nominations from the U.S. World Heritage Tentative List to the UNESCO World Heritage List, and on possible additions to the Tentative List. This notice complies with Sec. 73.7(c) of the World Heritage Program regulations (36 CFR part 73).

The U.S. World Heritage Tentative List (formerly referred to as the Indicative Inventory) appears at the end of this notice. The current Tentative List was transmitted to the UNESCO World Heritage Centre on January 24, 2008 and includes properties that appear to qualify for World Heritage status and which may be considered for nomination by the United States to the World Heritage List. Any property nominated to the World Heritage List must have been on the Tentative List for at least a year prior to its nomination, according to the *Operational Guidelines* of the World Heritage Committee.

On Thursday, July 14, 2011, the U.S. Department of the Interior announced that it had requested the preparation of draft World Heritage nominations for two properties or groups of properties on the Tentative List: The Frank Lloyd Wright Buildings and Poverty Point State Historic Site and National Monument. These draft nominations are currently in preparation.

The United States Department of the Interior is now considering whether to initiate the preparation of draft nominations for any of the remaining properties on the Tentative List to the World Heritage List. The Department will consider both public comments received during this comment period and the advice of the Federal Interagency Panel for World Heritage (the Panel) in making a final decision on any future nominations. The United States is currently prohibited by law from providing any funding to UNESCO, including UNESCO and World Heritage member dues. The Panel will consider possible implications of this status in making its recommendation on future nominations.

Comments may also be made on suggestions for additions to the Tentative List, although the Department is not required to make additions to the List. All previous suggestions made during the public comment period held from December 14, 2010–January 14, 2011, as well as those made since that time, are still on file for consideration and should not be resubmitted at this time.

DATES: Comments will be accepted on or before fifteen days from the date of publication of this notice in the **Federal Register**.

If additional site(s) are selected by the Department for nomination, public notice will be made of the decision. The site's owner(s) will be responsible, in cooperation with the National Park Service, for preparing the draft nomination in the nomination *Format* required by the World Heritage Committee and for gathering documentation in support of it. Legal protective measures must be in place before a property may be nominated. Any such nominations must be received from the preparers by the National Park Service in substantially complete draft form by a date on or near July 15, 2013. Such draft nominations will be reviewed, revisions requested if necessary, and, if considered by the Department to be technically and

substantively adequate, as well as in consideration of other relevant factors, may be provided to the World Heritage Centre for technical review no later than September 30, 2013. The Centre would then provide comments by approximately November 15, 2013, with final submittal to the World Heritage Centre by the Department of the Interior through the Department of State no later than January 30, 2014. Any nomination submitted by that date will be considered by the World Heritage Committee at its meeting in the summer of 2015. The Committee, composed of representatives of 21 nations elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List. If a nomination cannot be completed in accordance with this timeline, work may continue on the nomination for possible submission to UNESCO in a subsequent year.

ADDRESSES: Please provide all comments directly to Jonathan Putnam, Office of International Affairs, National Park Service, 1201 Eye Street NW., (0050). Washington, DC 20005 or by Email to: *jonathan_putnam@nps.gov.* Phone: 202–354–1809. Fax 202–371–1446. All comments will be a matter of public record. Before including an address, phone number, email address, or other personal identifying information in a comment, members of the public should be aware that the entire comment—including personal identifying information—may be made public at any time. While commenters can request that personal identifying information be withheld from public review, it may not be possible to comply with this request.

Comments on whether to nominate any of the properties on the Tentative List must address:

(i) How well the property(ies) meet the World Heritage nomination criteria, requirements for authenticity, integrity, legal protection and management. Information on these criteria and requirements can be found on the National Park Service Office of International Affairs Web site *http://www.nps.gov/oia/topics/worldheritage/worldheritage.htm* under ''General Information''; and

(ii) The readiness and ability of the property owner(s) to prepare a satisfactory nomination document according to the timeline outlined above.

Only the 10 properties or groups of properties included in U.S. Tentative List and not previously selected to prepare nominations are eligible to be considered for nomination by the United States to the World Heritage List at this time. One property on the List, Papahanaumokuakea Marine National Monument, was nominated in 2009 and listed as a World Heritage Site in 2010. Brief descriptions of the properties appear on the Web site just noted.

Suggestions for additions to the Tentative List not previously submitted must address:

(i) How well the property(ies) meet the World Heritage nomination criteria, requirements for authenticity, integrity, legal protection and management. Information on these criteria and requirements can be found on the National Park Service Office of International Affairs Web site *http://www.nps.gov/oia/topics/worldheritage/worldheritage.htm* under ''General Information;'' and

(ii) The U.S. legal prerequisites that include the agreement of all property owners to the nomination of their property, an official determination that the property is nationally significant (such as by designation as a National Historic or National Natural Landmark), and effective legal protection.

All previous suggestions for the Tentative List made during the public comment period held from December 14, 2010–January 14, 2011, as well as those made since that time, are still on file for consideration and should not be resubmitted at this time.

All public comments will be summarized and provided to Department of the Interior officials, who will obtain the advice of the Federal Interagency Panel for World Heritage before making any selection of properties for World Heritage nomination. The selection may include the following considerations:

(i) How well the particular type of property (i.e., theme or region) is represented on the World Heritage List in both the United States and other nations;

(ii) The balance between cultural and natural properties already on the List and those under consideration;

(iii) Opportunities that the property affords for public visitation, interpretation, and education;

(iv) Potential threats to the property's integrity or its current state of preservation;

(v) Likelihood of being able to complete a satisfactory nomination according to the timeline described above; and

(vi) Other relevant factors, including the possible implications of non-payment of U.S. dues to UNESCO or the World Heritage Fund.

FOR FURTHER INFORMATION CONTACT: Jonathan Putnam, 202–354–1809 or April Brooks, 202–354–1808. General information about U.S. participation in the World Heritage Program and the process used to develop the Tentative List is posted on the Office of International Affairs Web site at: *http://www.nps.gov/oia/topics/worldheritage/worldheritage.htm.*

To request a paper copy of the U.S. Tentative List, please contact April Brooks, Office of International Affairs, National Park Service, 1201 Eye Street, NW (0050) Washington DC 20005. Email: *april_brooks@nps.gov.*

For the World Heritage nomination *Format,* see the World Heritage Centre Web site at *http://whc.unesco.org/en/nominations.*

SUPPLEMENTARY INFORMATION:

Background

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The United States was the prime architect of the Convention, an international treaty for the preservation of natural and cultural heritage sites of global significance proposed by President Richard M. Nixon in 1972, and the U.S. was the first nation to ratify it. The United States has served several terms on the elected 21-nation World Heritage Committee, but is not currently on the Committee. There are 936 sites in 153 of the 188 signatory countries. Currently there are 21 World Heritage Sites in the United States.

U.S. participation and the roles of the Department of the Interior and the National Park Service are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR part 73—World Heritage Convention.

The National Park Service serves as the principal technical agency for the U.S. Government to the Convention and manages all or parts of 17 of the 21 U.S. World Heritage Sites currently listed, including Yellowstone National Park, the Everglades, and the Statue of Liberty.

A Tentative List is a national list of natural and cultural properties appearing to meet the World Heritage Committee eligibility criteria for nomination to the World Heritage List. It is a list of candidate sites which a country intends to consider for nomination within a given time period. A country cannot nominate a property unless it has been on its Tentative List for a minimum of a year. Countries also are limited to nominating no more than

two sites in any given year. If two are nominated, at least one must be a natural site or a cultural landscape.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject only to U.S. laws. Inclusion in the Tentative List merely indicates that the property may be further examined for possible World Heritage nomination in the future.

The World Heritage Committee's *Operational Guidelines* ask participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work over the long term.

In order to guide the U.S. World Heritage Program effectively and in a timely manner, NPS prepared and submitted (through the Secretary of the Interior and the Secretary of State) to the World Heritage Centre of UNESCO on January 24, 2008, the previously referenced Tentative List of properties that appear to meet the criteria for nomination. Information on how the Tentative List was developed is available on the Office of International Affairs Web site at *http://www.nps.gov/oia/topics/worldheritage/worldheritage.htm.*

In order to be included, a proposed site must meet several U.S. prerequisites in addition to appearing to meet the stringent World Heritage criteria of international importance. The U.S. prerequisites include the written agreement of all property owners to the nomination of their property, a prior official determination that the property is nationally important (such as by designation as a National Historic or National Natural Landmark), and effective legal protection. Support from stakeholders, including elected officials, is also considered important.

U.S. World Heritage Tentative List Cultural Sites (9)

Civil Rights Movement Sites, Alabama

Dexter Avenue King Memorial Baptist Church, Montgomery
Bethel Baptist Church, Birmingham
16th Street Baptist Church, Birmingham

Dayton Aviation Sites, Ohio

Dayton Aviation Heritage National Historical Park, including:

—Huffman Prairie (part of Wright-Patterson Air Force Base)
—Wright Cycle Company and Wright & Wright Printing, Dayton
—Wright Hall (housing the Wright Flyer III), Dayton
—Hawthorn Hill, Dayton

Hopewell Ceremonial Earthworks, Ohio

Fort Ancient State Memorial, Warren County
Hopewell Culture National Historical Park, near Chillicothe

Newark Earthworks State Historic Site, Newark and Heath, including:

—Wright Earthworks
—The Octagon Earthworks
—Great Circle Earthworks

Jefferson (Thomas) Buildings, Virginia

Poplar Forest, Bedford County
Virginia State Capitol, Richmond

(Proposed jointly as an extension to the World Heritage listing of Monticello and the University of Virginia Historic District)

Mount Vernon, Virginia

Poverty Point National Monument and State Historic Site, Louisiana [Selected To Prepare a Nomination in 2011; Draft Nomination in Preparation]

San Antonio Franciscan Missions, Texas

Mission San Antonio de Valero (The Alamo)

San Antonio Missions National Historical Park, including:

—Mission Concepcion
—Mission San Jose
—Mission San Juan
—Mission Espada (including Rancho de las Cabras)

Serpent Mound, Ohio

Wright (Frank Lloyd) Buildings [Selected To Prepare a Nomination in 2011; Draft Nomination in Preparation]

Taliesin West, Scottsdale, Arizona
Hollyhock House, Los Angeles, California
Marin County Civic Center, San Rafael, California
Frederick C. Robie House, Chicago, Illinois
Unity Temple, Oak Park, Illinois
Solomon R. Guggenheim Museum, New York, New York
Price Tower, Bartlesville, Oklahoma
Fallingwater, Mill Run, Pennsylvania
S. C. Johnson and Son, Inc., Administration Building and Research Tower, Racine, Wisconsin
Taliesin, Spring Green, Wisconsin
Herbert and Katherine Jacobs House, Madison, Wisconsin

Natural Sites (4)

Fagatele Bay National Marine Sanctuary, American Samoa

Okefenokee National Wildlife Refuge, Georgia

Petrified Forest National Park, Arizona

White Sands National Monument, New Mexico

Authority: 16 U.S.C. 470 a–1, a–2, d; 36 CFR 73.

Dated: February 10, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–5191 Filed 3–2–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0091

Agency Information Collection Activities: Proposed Collection; Comments Requested: Office of Tribal Justice; Assumption of Concurrent Federal Criminal Jurisdiction in Certain Areas of Indian Country

ACTION: 30-Day notice of information collection under review.

The Department of Justice, Office of Tribal Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 250, pages 81966–81967, on December 29, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 4, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need additional information, please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW, Room 2310, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) Title of the Form/Collection: Request to the Attorney General for Assumption of Concurrent Federal Criminal Jurisdiction.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form. *Component:* Office of Tribal Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Tribal governments. *Other:* None.

Abstract: The Department of Justice is publishing a proposed rule to establish the procedures for an Indian tribe whose Indian country is subject to State criminal jurisdiction under Public Law 280 (18 U.S.C. 1162(a)) to request that the United States accept concurrent criminal jurisdiction within the tribe's Indian country, and for the Attorney General to decide whether to consent to such a request. The purpose of the collection is to provide information from the requesting tribe sufficient for the Attorney General to make a decision whether to consent to the request.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Fewer than 350 respondents; 80 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 28,000 annual total burden hours associated with this collection.

Fewer than 350 Indian tribes are eligible for the assumption of concurrent criminal jurisdiction by the United States. The Department of Justice does not know how many eligible tribes will, in fact, make such a request. The information collection will require Indian tribes seeking assumption of concurrent criminal jurisdiction by the United States to provide certain information relating to public safety within the Indian country of the tribe.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, 145 N Street NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–5246 Filed 3–2–12; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Third Amendment to Consent Decree Under the Clean Air Act

Under 28 U.S.C. 50.7, notice is hereby given that on February 28, 2012, a proposed Third Amendment to the Consent Decree entered in the case of *United States, et al.* v. *ConocoPhillips Company,* Civil Action No. H–05–0258, was lodged with the United States District Court for the Southern District of Texas.

Under the original Consent Decree, ConocoPhillips Company (''COPC'') agreed to implement innovative pollution control technologies to reduce emissions of nitrogen oxides, sulfur dioxide, and particulate matter from refinery process units at nine refineries owned and operated by COPC. COPC also agreed to adopt facility-wide enhanced benzene waste monitoring and fugitive emission control programs. Subsequently, the Court entered First and Second Amendments to the Consent Decree and a new owner (WRB Refining) of two of the refineries—the Wood River and Borger Refineries—was added as a defendant. COPC remained a defendant with respect to those two refineries because it continued to operate them.

COPC still is obligated to comply with the Consent Decree as amended. However, under the Third Amendment, COPC will undertake a demonstration project and emissions tests at a recently installed delayed coking unit at its Wood River Refinery in order to enable the parties to establish new limits and controls for the coke drum steam vents and coker quench water tank. COPC also will pay civil penalties of $249,000, $98,500, and $21,000 to resolve alleged Benzene Waste Operations NESHAP (''BWON'') violations at its Borger, Trainer, and Wood River Refineries, respectively. In addition, for the resolution of the BWON claims at its Wood River Refinery, COPC will perform a Supplemental Environmental Project valued at $77,000 to retrofit diesel school buses with pollution controls. Finally, several minor and non-material modifications are included in the Third Amendment.

In the Third Amendment, the United States is joined by all Co-Plaintiffs to the original Consent Decree: the State of Illinois, the State of Louisiana, the State of New Jersey, the Commonwealth of Pennsylvania, and the Northwest Clean Air Agency in the State of Washington.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Third Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either mailed 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, et al.* v. *ConocoPhillips Company,* D. J. Ref. No. 90–5–2–1–06722/1.

During the public comment period, the Third Amendment may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Third Amendment 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 ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax number (202) 514–0097; phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $13.75 (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.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–5199 Filed 3–2–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0029]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Records and Supporting Data: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data by Licensed Explosives Manufacturers

ACTION: 30-Day notice of information collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 250, page 81967 on December 29, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 4, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax to 202–395–7285. All comments should reference the eight digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please ccontact William J. Miller at *William.miller@atf.gov*.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden for the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Supporting Data: Daily Summaries, Records of Production, Storage and Disposition and Supporting Data by Explosives Manufacturers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. *Abstract:* These records show daily activities in the manufacture, use, storage, and disposition of explosive materials by manufacturers.

Need for Collection

The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversion will be readily apparent and if lost or stolen, ATF will be immediately notified on discovery of the loss or theft. ATF requires that records be kept 5 years from the date a transaction occurs or until discontinuance of business or operations by the licensee.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be 2,008 estimated respondents, who will take 15 minutes to maintain each record.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 130,520 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–5249 Filed 3–2–12; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0047]

Agency Information Collection Activities: Proposed Collection, Comments Requested: Revision of a Currently Approved Collection; Applicant Questionnaire: Race, National Origin, Gender, and Disability Demographics

ACTION: 30-Day notice of information collection under review.

The Department of Justice, Federal Bureau of Investigation, Human Resources Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The proposed information collection is published to obtain comments from the public and other government agencies. The proposed revised information collection was previously published in the **Federal Register** allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 4, 2012. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information should be directed to Angela Graham, Human Resources Specialist (Special Projects/Policy), Human Capital Planning Section (HCPS), Human Resources Division (HRD), Federal Bureau of Investigation, 935 Pennsylvania Ave. NW., Room 10975, Washington, DC, 20535. To view the proposed collection instrument with instruction, please visit the following link: *http://www.fbi.gov/fbijobs_proposedcollection.htm*.

Written comments and suggestions from the public and affected agencies concerning the revised collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have a 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Applicant Questionnaire: Race, National Origin, Gender and Disability Demographics

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form 3–873, Sponsor: Human Resources Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Any person registering and/or applying for a position at the Federal Bureau of Investigation.

Abstract: The Equal Employment Opportunity Commission Management Directive 715 (MD 715), requires agencies to maintain a system that: (1) Collects and maintains accurate information on race, national origin, gender and disability of an applicant/or employee in accordance with 29 CFR, paragraph 1614.601; (2) tracks applicant flow data; and (3) tracks recruitment activities to permit analyses of these efforts in any examination of potential barriers to equality of opportunity. Agencies must also ''conduct an internal review and analysis of the effects of all current and proposed policies, practices, and conditions that directly or indirectly,'' related to the employment of individuals with disabilities based on their race, national origin, gender and disabilities. However, an Agency may not collect demographics information, unless it displays a valid OMB control number. In order to comply with MD 715, the FBI is requesting clearance from OMB in accordance with established review procedures of the Paperwork Reduction Act of 1995. Once cleared for use, the revised form will be used to collect race, national origin, gender, and disability demographic information from applicants registering in the FBI's automated hiring system. All job applicants, whether internal or external, would be asked to complete, on a voluntary basis, an ''Applicant Questionnaire: Race, National Origin, Gender, and Disability Demographics.'' The FBI must collect and evaluate information and data necessary to make an informed assessment the extent to which the Agency is meeting its responsibility to provide employment opportunities for qualified applicants and employees with disabilities, especially those with target disabilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for or an average respondent to respond:* There are approximately 455,937 respondents that submit a one-time completion of questionnaire per respondent for a total of responses with an estimated response time of 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 37,994.75 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–5247 Filed 3–2–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0005]

Agency Information Collection Activities: Proposed Collection, Comments Requested: Revision of a Currently Approved Collection; Age, Sex, and Race of Persons Arrested 18 Years of Age and Over; Age, Sex, and Race of Persons Arrested Under 18 Years of Age

ACTION: 30-Day notice of information collection under review.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will be submitting the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 248, page 80966, on December 27, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 4, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of current collection.

(2) *The title of the form/collection:* Age, Sex, and Race of Persons Arrested 18 Years of Age and Over; Age, Sex, and Race of Persons Arrested Under 18 Years of Age.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1–708 and 1–708a; Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal, and tribal law enforcement agencies. Brief Abstract: This collection gathers data obtained from law law enforcement in which an arrest has occurred.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 18,108 law enforcement agency respondents at 12 minutes for 1–708a and 15 minutes for 1–708.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 97,783 hours annual burden associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012–5248 Filed 3–2–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements; Notice of Open Meeting

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of open meeting, March 23, 2012.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended, 5. U.S.C. App. 2, the Office of Trade and Labor Affairs (OTLA) gives notice of a meeting of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements (''Committee'' or ''NAC''), which was established by the Secretary of Labor.

The purpose of the meeting is to discuss the implementation of the labor provisions of the Free Trade Agreements, technical cooperation programs and planning, and a Subcommittee's report regarding the North American Agreement on Labor Cooperation.

DATES: The Committee will meet on Friday, March 23, 2012 from 10 a.m. to 5 p.m.

ADDRESSES: The Committee will meet at the U.S. Department of Labor, 200 Constitution Avenue NW., Deputy Undersecretary's Conference Room, Washington, DC 20210. Mail comments, views, or statements in response to this notice to Paula Church Albertson, Office of Trade and Labor Affairs, ILAB, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5004, Washington, DC 20210; phone (202) 693–4789; fax (202) 693–4784 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Paula Church Albertson, Designated Federal Official, Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5004, Washington, DC 20210; phone (202) 693–4789.

Individuals with disabilities wishing to attend the meeting should contact Ms. Albertson no later than March 16, 2012, to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: NAC meetings are open to the public on a first-come, first-served basis, as seating is limited. Attendees must present valid identification and will be subject to security screening to access the Department of Labor for the meeting.

Agenda: Agenda items will include an update and discussion on the implementation of the labor provisions of Free Trade Agreements (FTAs), a brief presentation on USDOL technical assistance efforts in FTA countries, and a review and discussion by the full Committee of the Sub-Committee report on the North American Agreement on Labor Cooperation.

Public Participation: Written data, views, or comments for consideration by the NAC on the agenda listed above should be submitted to Paula Church Albertson at the address listed above. Submissions received by March 16, 2012, will be provided to Committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits.

Signed at Washington, DC, the 24th day of February 2012.

Sandra Polaski,

Deputy Undersecretary, International Affairs.

[FR Doc. 2012–5198 Filed 3–2–12; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–019]

Information Collection; NASA Contractor Financial Management Reports

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Frances Teel, JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, *Frances.C.Teel@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost based budgeting system.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

II. Method of Collection

NASA collects this information electronically and that is the preferred manner, however information may also be collected via mail or fax.

III. Data

Title: NASA Contractor Financial Management Reports.

OMB Number: 2700–0003.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 800.

Estimated Time per Response: 9 hrs.

Estimated Total Annual Burden Hours: 86,000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collection has practical utility; (2) the accuracy of NSA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality and utility of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA Clearance Officer.

[FR Doc. 2012–5178 Filed 3–2–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Proposed Collection; Comments Request

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Proposed collection; comments request.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: National Endowment for the Arts Panelist Profile Form. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below within 60 days from the date of this publication in the **Federal Register**. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond.

ADDRESSES: Kathy Plowitz-Worden, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 620, Washington, DC 20506–0001, telephone (202) 682–5691 (this is not a toll-free number), fax (202) 682–5049.

Dated: February 29, 2012.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2012–5267 Filed 3–2–12; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice—meeting.

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW, Washington, DC 20506 as follows (ending time is approximate):

Accessibility (application review): March 20, 2012 in Room 716. This meeting, from 3 p.m. to 4:30 p.m. EDT, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202–682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: February 29, 2012.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2012–5274 Filed 3–2–12; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On January 25, 2012, the National Science

Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on February 28, 2012 to: Charles D. Amsler, Jr., Permit No. 2012–012.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–5181 Filed 3–2–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Waste Regulation

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95–541; Code of Federal Regulations Title 45, Part 670). This is the required notice.

DATES: Interested parties are invited to submit written data, comments, or views with respect to the modification request on or before April 4, 2012. The permit modification request may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to the Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale, Environmental Officer, at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: Lockheed Martin Corporation is in the phase-in period for assuming responsibility for the contract to provide operations support to the United States Antarctic Program. As part of that support, Lockheed Martin personnel will be assuming responsibility for waste management activities. Those activities are currently regulated under the terms of a permit held by the incumbent contractor, Raytheon Polar Services Company, Permit Number 2010 WM–004. Lockheed Martin has requested that the permit be transferred to them. The transfer would be effective on or about 1 April 2012, the date the new contract is anticipated to take effect. The transfer would modify the permit to change the permit holder from Raytheon Polar Services Company to Lockheed Martin Corporation, Information Systems & Global Solutions (I&GS) Engineering Services Segment, 700 N. Frederick Avenue, Gaithersburg, MD 20879–3328. All other permit conditions would remain the same.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–5164 Filed 3–2–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0250]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 28, 2011 (76 FR 72983).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee.''

3. *Current OMB approval number:* 3150–0024.

4. *The form number if applicable:* NRC Form 396.

5. *How often the collection is required:* Upon application for an initial or upgrade operator license or, every six years for the renewal of operator or senior operator license, and upon notices of disability.

6. *Who will be required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of an applicant or licensee.

7. *An estimate of the number of annual responses:* 2,160.

8. *The estimated number of annual respondents:* 135 Facilities submitting initial and upgrade applications, renewals and disability forms.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,215 hours (1,012.5 hours for reporting, and 202.5 hours for recordkeeping).

10. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 4, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0024), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at (202) 395–4718.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 28th day of February, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–5202 Filed 3–2–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0036]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Request to Non-Agreement States for Information.

2. *Current OMB approval number:* 3150–0200.

3. *How often the collection is required:* 8 times per year.

4. *Who is required or asked to report:* The 15 Non-Agreement States (13 States, the District of Columbia and the Commonwealth of Puerto Rico that have not signed Section 274(b) Agreements with NRC.).

5. *The number of annual respondents:* 15.

6. *The number of hours needed annually to complete the requirement or request:* 1,089.

7. *Abstract:* Requests may be made of Non-Agreement States that are similar to those of Agreement States to provide a more complete overview of the national program for regulating radioactive materials. This information would be used in the decision-making of the Commission. With Agreement States and as part of the NRC cooperative post-agreement program with the States pursuant to Section 274(b), information on licensing and inspection practices, and/or incidents, and other technical and statistical information are exchanged. Therefore, information requests sought may take the form of surveys, e.g., telephonic and electronic surveys/polls and facsimiles.

Submit, by May 4, 2012, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.*

The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2012–0036.

You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2012–0036. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 28th day of February, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–5203 Filed 3–2–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0034; Docket No. 50–400]

Carolina Power & Light Company; Shearon Harris Nuclear Power Plant, Unit 1; Exemption

1.0 Background

Carolina Power & Light Company, the licensee, doing business as Progress Energy Carolinas Inc., is the holder of Renewed Facility Operating License No. NPF–63, which authorizes operation of the Shearon Harris Nuclear Power Plant (HNP), Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facility consists of one pressurized-water reactor (PWR) located in New Hill, North Carolina.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' requires, among other items, that each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents (LOCAs) conforms to the criteria set forth in paragraph (b) of this section. Appendix K to 10 CFR Part 50, ''ECCS Evaluation Models,'' requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. The regulations of 10 CFR 50.46 and 10 CFR part 50, Appendix K, make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO.

The licensee intends to load the M5 ™ cladding fuel assemblies into the core of HNP, Unit 1 during Refueling Outage 17, currently scheduled for spring 2012. The AREVA fuel design consists of low enriched uranium oxide fuel within M5 ™ zirconium alloy cladding. Since the chemical composition of the M5 ™ alloy differs from the specifications for zircaloy or ZIRLO, a plant-specific exemption is required to allow the use of the M5 ™ alloy as a cladding material or in other assembly structural components. Therefore, by letter dated January 19, 2011 (Agencywide Documents Access and Management System Accession No. ML110250473), the licensee requested an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50 in order to use the fuel rods clad with AREVA's M5 ™ alloy.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and

(2) when special circumstances are present.

Authorized by Law

This exemption would allow the use of M5 ™ advanced alloy, in lieu of zircaloy or ZIRLO, for fuel rod cladding in fuel assemblies at HNP, Unit 1. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.46 and 10 CFR part 50, Appendix K, are to ensure that facilities have adequate acceptance criteria for the ECCS, and to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model, respectively. Topical Reports (TRs) BAW–10227(P)–A, ''Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel,'' which was approved by the NRC in February 2000, and BAW–10240(P)–A, ''Incorporation of M5 Properties in Framatome ANP Approved Methods,'' which was approved by the NRC in May 2004, demonstrated that the effectiveness of the ECCS will not be affected by a change from zircaloy to M5 ™. In addition, the TRs also demonstrated that the Baker-Just equation (used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation) is conservative in all post-LOCA scenarios with respect to the use of M5 ™ advanced alloy as a fuel rod cladding material or in other assembly structural components. Based on the above, no new accident precursors are created by using M5 ™ advanced alloy, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. In addition, the licensee will use NRC-approved methods for the reload design process for HNP Unit 1 reloads with M5 ™. Therefore, there is no undue risk to public health and safety due to using M5 ™.

Consistent With Common Defense and Security

The proposed exemption results in changes to the operation of the plant by allowing the use of the M5 ™ alloy as fuel cladding material or in other assembly structural components in lieu of zircaloy or ZIRLO. This change to the fuel material used in the plant has no relation to security issues. Therefore, the common defense and security are not impacted by this exemption request.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12, are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule, or is not necessary to achieve the underlying purpose of the rule. In this circumstance neither 10 CFR 50.46 nor 10 CFR part 50, Appendix K, explicitly allows the use of M5 ™ as a fuel rod cladding material or in use of other assembly structural components.

The underlying purpose of 10 CFR 50.46 is to ensure that facilities have adequate acceptance criteria for the ECCS. The staff's review and approval of TR BAW–10227(P)–A addressed all of the important aspects of M5 ™ with respect to ECCS Performance Requirements: (1) Applicability of 10 CFR 50.46(b) fuel acceptance criteria, (2) M5 ™ material properties including fuel rod ballooning and rupture strains, and (3) steam oxidation kinetics and applicability of Baker-Just weight gain correlation. A subsequent NRC-approved TR, BAW–10240(P)–A, further addressed M5 ™ material properties with respect to LOCA applications.

The underlying purpose of 10 CFR Part 50, Appendix K, paragraph I.A.5, is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Appendix K requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. In TR BAW–10227(P)–A, Framatome demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the M5 ™ advanced alloy as a fuel rod cladding material or in other assembly structural components, and that the amount of hydrogen generated in an M5 ™ core during a LOCA will remain within the HNP Unit 1 design basis.

The M5 ™ alloy is a proprietary zirconium-based alloy comprised of primarily zirconium (~99 percent) and niobium (~1 percent). The elimination of tin has resulted in superior corrosion resistance and reduced irradiation-induced growth relative to both standard zircaloy (1.7 percent tin) and low-tin zircaloy (1.2 percent tin). The addition of niobium increases ductility, which is desirable to avoid brittle failures.

The NRC staff has reviewed the licensee's advanced cladding material, M5 ™, for PWR fuel mechanical designs as described in TR BAW–10227(P)–A. In the safety evaluation for TR BAW–10227(P)–A, the staff concluded that, to the extent specified in the staff's evaluation, the M5 ™ properties and mechanical design methodology are acceptable for referencing in fuel reload licensing applications. Application of the requirements of 10 CFR 50.46 and 10 CFR part 0 Appendix K, paragraph I.A. 5 is not necessary to achieve their underlying purpose. The underlying purposes of 10 CFR 50.46 and 10 CFR part 50, Appendix K, paragraph I.A.5 are achieved through the use of the M5 ™ advanced alloy as a fuel rod cladding material or in other assembly structural components. Thus, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR 50.46 and 10 CFR part 50, Appendix K, exist.

Summary

The NRC staff has reviewed the licensee's request to use the M5 ™ advanced alloy for fuel rod cladding and in other assembly structural components in lieu of zircaloy or ZIRLO. Based on the NRC staff's evaluation, as set forth above, the NRC staff concludes that the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. In addition, the NRC staff concludes that the application of 10 CFR 50.46 and 10 CFR Part 50, Appendix K, is not necessary to achieve the underlying purpose of the regulations. Therefore, pursuant to 10 CFR 50.12(a), the NRC staff concludes that the use of the M5 ™ advanced alloy for fuel rod cladding and in other assembly structural components is acceptable and the exemption from 10 CFR 50.46 and 10 CFR Part 50, Appendix K, is justified.

4.0 Conclusion

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and 10

CFR part 50, Appendix K, for HNP Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (February 15, 2012; 77 FR 8903). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 24th day of February 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–5226 Filed 3–2–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meeting Notice

DATE: Weeks of March 5, 12, 19, 26, April 2, 9, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 5, 2012

Thursday, March 8, 2012

10 a.m. Affirmation Session (Public Meeting) (Tentative)

a. NextEra Seabrook, LLC (Seabrook Station, Unit 1), Appeals of *LBP–11–2 (Feb. 15, 2011), Docket No. 50–443–LR* (Tentative)

b. *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Commonwealth of Massachusetts' Notice of Appeal, and Supporting Brief, of LBP–11–35 (Dec. 8, 2011); Pilgrim Watch's Petition for Review of Memorandum and Order (Denying Commonwealth of Massachusetts' Request for Stay, Motion for Waiver, and Request for Hearing on a New Contention Relating to the Fukushima Accident) Nov. 28, 2011 (Dec. 8, 2011); Commonwealth of Massachusetts' Conditional Motion to Suspend Pilgrim Nuclear Power Plant License Renewal Proceeding Pending Resolution of Petition for Rulemaking to Rescind Spent Fuel Pool Exclusion Regulations (June 2, 2011)* (Tentative)

Week of March 12, 2012—Tentative

There are no meetings scheduled for the week of March 12, 2012.

Week of March 19, 2012—Tentative

There are no meetings scheduled for the week of March 19, 2012.

Week of March 26, 2012—Tentative

Tuesday, March 27, 2012

9 a.m. Briefing on License Renewal for Research and Test Reactors (Public Meeting) (Contact: Jessie Quichocho, 301–415–0209)

This meeting will be Web cast live at the Web address: *www.nrc.gov.*

Week of April 2, 2012—Tentative

There are no meetings scheduled for the week of April 2, 2012.

Week of April 9, 2012—Tentative

There are no meetings scheduled for the week of April 9, 2012.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: February 29, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–5358 Filed 3–1–12; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting Notice

TIME AND DATE: 2 p.m., Wednesday, March 21, 2012.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Hearing OPEN to the Public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES:

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, March 16, 2012. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Friday, March 16, 2012. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the March 29, 2012 Board meeting will be posted on OPIC's Web site on or about Friday, March 9, 2012.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at *Connie.Downs@opic.gov.*

Dated: March 1, 2012.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2012–5391 Filed 3–1–12; 4:15 pm]

BILLING CODE 3210–01–P

POSTAL SERVICE

Sunshine Act Meeting Notice: Board of Governors

DATES AND TIMES: Wednesday, March 21, 2012, at 10 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., in the Benjamin Franklin Room.

STATUS: Closed.

Matters To Be Considered

Wednesday, March 21, at 10 a.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2012–5327 Filed 3–1–12; 8:45 am]

BILLING CODE 7710–10–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Nanoscale Science, Engineering, and Technology Subcommittee of the Committee on Technology, National Science and Technology Council Workshop

ACTION: Notice of public meeting.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will hold the ''2012 Regional, State, and Local (RSL) Initiatives in Nanotechnology Workshop'' on May 1–2, 2012. This workshop will bring together leaders of regional, state, and local organizations to engage in dialog with the Federal government; economic development groups; investors and entrepreneurs; technology leaders; and scientists and engineers from industry, business, government, and academia. The discussion will address a wide range of resource, organizational, and policy issues impacting RSL nanotechnology initiatives.

The workshop, cosponsored by the Federal agencies participating in the National Nanotechnology Initiative (NNI) and the Oregon Nanoscience and Microtechnologies Institute (ONAMI), will examine the current landscape of U.S. RSL nanotechnology initiatives and their status; RSL best practices, business models, resources, and opportunities for partnering; and the role of nanotechnology RSLs in future U.S. economic growth and job creation.

Dates and Addresses: The workshop will be held at the Embassy Suites Portland-Downtown Hotel, 319 SW Pine Street, Portland, OR, 97204 on Tuesday, May 1, 2012 from 8:30 a.m. until 6 p.m. and on Wednesday, May 2, 2012 from 8:30 a.m. until 6 p.m. For directions, please visit *www.nano.gov/RSL12.*

Registration: Due to space limitations, pre-registration for the workshop is required. Individuals planning to attend the workshop should register online at *http://www.nano.gov/rslregistration.* Written notices of participation by email should be sent to *RSL12@nnco.nano.gov* or mailed to RSL 2012 Workshop, c/o NNCO, 4201 Wilson Boulevard, Stafford II, Suite 405, Arlington, VA 22230. Registration is on a first-come, first-served basis until capacity is reached; otherwise registration will close on April 27, 2012 at 5 p.m. EST. Those interested in presenting 3–5 minutes of public comments at the meeting should also register at *http://www.nano.gov/rslregistration.* Written or electronic comments should be submitted by email to *RSL12@nnco.nano.gov* until April 27, 2012. The workshop will include an opportunity for any regional, state, or local nanotechnology initiative or related organization to present a poster explaining the activity.

Meeting Accomodations: Individuals requiring special accommodation to access this public meeting should contact Halyna Paikoush by email (*RSL12@nnco.nano.gov*) or by telephone (410–467–9832) at least ten business days prior to the meeting so that appropriate arrangements can be made.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact James Kadtke or Halyna Paikoush at the National Nanotechnology Coordination Office by telephone (703–292–8626) or email (*RSL12@nnco.nano.gov*). Additional information about the meeting, including the agenda, is posted at *www.nano.gov/RSL12.*

Ted Wackler,

Deputy Chief of Staff.

[FR Doc. 2012–5223 Filed 3–2–12; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66481; File No. SR–NYSEAmex–2012–10]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Rule 476A To Update Its ''List of Equities Rule Violations and Fines Applicable Thereto''

February 28, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 16, 2012, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Rule 476A to update its ''List of Equities Rule Violations and Fines Applicable Thereto.'' 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Rule 476A to update its ''List of Equities Rule Violations and Fines Applicable Thereto'' (''Rule 476A List'') to (i) make technical, non-substantive changes to conform the list to previously-approved changes in Exchange rules, (ii) update the rules relating to conduct by Designated Market Makers (''DMM''); and (iii) add rules relating to conduct by DMMs.

Background

Under the Exchange's Minor Rule Violation Plan, NYSE Amex Rule 476A (''Rule 476A''), the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, principal executive, approved person or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules (a ''summary fine''). Summary fines provide a meaningful sanction for rule violations when the violation calls for stronger discipline than an admonition or cautionary letter, but the facts and circumstances of the violation do not warrant initiation of a formal disciplinary proceeding under Rule 476.

Proposed Non-Substantive Changes to Rule 476A List

The Exchange proposes the following non-substantive changes to update the Rule 476A List, as follows:

- Update the title of NYSE Amex Equities Rule 105
- Update rule references that have been renumbered or harmonized with a FINRA rule: NYSE Amex Equities Rules 72(b) to 72(d); 79A.30 to 79A.20; 103.12 to 103.11; and 346(b) to 3270
- Delete references to rules that have been deleted: NYSE Amex Equities Rules 104.12 (DMM investment account rule); 123A.30 (percentage orders); 304(h)(2) (reporting rule violation); 346(c), (e), and (f) (Limitations on member organization employment and failure to obtain Exchange approval rule violations); 421 (reporting rule violation); 440F (reporting rule violation); and 440G (reporting rule violation) [4]
- Further harmonize the list with the NYSE Minor Rule Violation Plan (''NYSE MRVP''), upon which the Rule 476A List is based, by adding a [sic] violations not currently included in the Exchange's list: Rule 123C—NYSE Amex Equities—Failure to adhere to entry and cancellation procedures for limit-at-the-close and market-at-the-close orders; and Rule 15—NYSE Amex Equities (Pre-Opening Indications)
- Update the description to rules that have been amended: NYSE Amex Equities Rules 411(b) (replacing the description to reflect the amended rule); and 345(a)—NYSE Amex Equities (deleting the reference to Securities Trader Supervisor)

Proposed Updates to Rule 476A List for DMM Conduct Rules

The current Rule 476A List includes rules that govern DMM conduct, *e.g.,* NYSE Amex Equities Rules 104(a)(1)(A) and 104.10. The Exchange proposes to update the Rule 476A List with current rules governing DMM conduct, and, in conformance with the existing NYSE MRVP, add NYSE Amex Equities Rule 123D (''Rule 123D'') to the Rule 476A List. The Exchange further proposes to expand the references to NYSE Amex Equities Rules 104 (''Rule 104'') and 123D to add new elements to the Rule 476A List.

The Exchange believes that the updates proposed below will provide the Exchange with sufficient flexibility to address DMM failure to meet their obligations. The Exchange recognizes that DMMs may, for many reasons, fail to meet their affirmative obligations as prescribed under Rules [sic] 104 or duties under Rule 123D. In some circumstances, formal disciplinary measures in accordance with Rule 476 are warranted. However, in other instances, formal discipline may be unwarranted, and the Exchange believes that the addition of these Rules to Rule 476A List will provide a more flexible and appropriate tool to enforce potential failure by DMMs to adhere to the requirements set forth in those rules, while preserving the Exchange's discretion to seek formal discipline under the appropriate circumstances. The Exchange believes that the proposed updated rule references cover the same subject matter as are already addressed in the Rule 476A List, albeit in outdated references. In addition, the Exchange believes it is also appropriate to add new elements relating to Rule [sic] 104 and 123D to the Rule 476A List.

Rule 104

Rule 104 requires, *inter alia,* DMMs registered in one or more securities traded on the Exchange to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market, insofar as reasonably practicable, by contributing liquidity when lack of price continuity and depth, or disparity between supply and demand exists or is reasonably to be anticipated.[5]

The Rule 476A List currently includes Rule 104(a)(1)(A), which requires DMMs to maintain a bid or an offer at the National Best Bid and National Best Offer (''inside'') at least 10% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume of less than one million shares, and at least 5% for securities in which the DMM unit is registered with a consolidated average daily volume equal to or greater than one million shares.

The Rule 476A List also includes an outdated reference to Rule 104.10. When the Exchange adopted the New Market Model, it adopted current Rule 104 (on a pilot basis), which does not include a rule reference of 104.10 that is the same as the former Rule 104.10.[6] However, the subject matter formerly covered in Rule 104.10 continues in the current Rule 104. For example, the text of former Rules 104.10(5) and (6) has been moved in substantially similar form to current Rules 104(g), (h), and (i).

More generally, although the Exchange has deleted former Rule 104.10(1)—(3), the subject matter of those rules has been carried forward in various sections of current Rule 104. For example, former Rule 104.10 specified the functions of DMMs, including the maintenance, in so far as reasonably practicable, of a fair and orderly market. This topic is now covered by Rules 104(a) and (f).

More specifically, former Rule 104.10(1) stated that the maintenance of a fair and orderly market implies the maintenance of price continuity with reasonable depth and the minimizing of the effects of temporary disparity between supply and demand. This subject matter is now covered in Rule

[4] The Exchange also proposes to fix a typographical error in the entry concerning Rule 343—NYSE Amex Equities and replace the term ''officer'' with ''office.''

[5] Rule 104 currently operates on a pilot basis, set to end on July 31, 2012. The Exchange believes that the Rule 476A List should reference those rules that are currently operational, even if operating on a pilot basis.

[6] *See* Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR–NYSEALTR–2008–10) (adopting the NYSE New Market Model rules at the Exchange).

104(f)(ii). Former Rule 104.10(2) concerned a DMM trading for his or her own account when there is [sic] lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated. This subject matter is similarly covered in Rule 104(f)(ii). Finally, former Rule 104.10(3) provided that DMM dealings for his own account must constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to minimizing the effects of temporary disparity between supply and demand. This is similarly covered in Rule 104(f)(ii). The Exchange further believes that Rule 104(f)(iii), which provides more details about Depth Guidelines, is also related to former Rule 104.10(3). In particular, the Exchange was publishing Depth Guidelines when Rule 104.10 was in effect and the only change in the New Market Model's version of the rule is to codify this aspect of DMM obligations.

The Exchange also believes that the subject matter of former Rules 104.10(1)–(3) is now covered in current Rules 104(a)(2)–(5). Current Rules 104(a)(2)–(5) describe with specificity how a DMM can meet his or her responsibilities and duties to maintain a fair and orderly market, including facilitating openings and re-openings, the close of trading, trading when a liquidity replenishment point is reached, and trading when a ''gap'' quote procedure is being used. These rule provisions simply provide detail of how a DMM is to meet its fair and orderly obligation. These were functions that specialists formerly performed when they were subject to former Rule 104.10(1)–(3), the difference now being that these functions have been codified in the rule text.

The Exchange further proposes to add to the Rule 476A List Rules 104(b), (c), (d), and (e). The Exchange believes that, similar to Rule 104(a), (f), (g), (h), and (i), the requirements applicable to DMMs in Rules 104(b), (c), (d), and (e) relate to the functions of the DMMs. Because these are DMM obligations for which potential violations can range in severity, including these elements of Rule 104 in the Rule 476A List is consistent with the current inclusion of other aspects of Rule 104.

In addition, the Exchange believes it is appropriate to add Rule 104(a)(1)(B) to the Rule 476A List. Rule 104(a)(1)(B) governs the DMM's new pricing obligations, which were implemented by all equities markets on December 6, 2010.[7] Accordingly, this provision was not previously included in the Minor Rule Violation Plan. The Exchange believes it is appropriate to add this element of Rule 104 to the Minor Rule Violation Plan to provide greater flexibility with respect to the type of disciplinary measures that may be invoked if there were a violation of this rule. For example, a potential situation that may warrant a summary fine rather than formal disciplinary action could be if a DMM fails to maintain a quote consistent with Rule 104(a)(1)(B), but which does not result in any harm to the market.

As noted above, summary fines provide the Exchange with flexibility to impose an appropriate level of discipline for violations that are more serious than an admonition letter, but for which the facts and circumstances do not warrant formal discipline. The Exchange believes that providing flexibility for violations related to the DMM's new pricing obligations and Rules 104(b), (c), (d), and (e) is in keeping with the spirit of the existing Rule 476A List, which already includes DMM conduct rules.

To reflect these changes, the Exchange proposes to include a single reference to ''Rule 104–NYSE Amex Equities requirements for the dealings and responsibilities of DMMs'' to the Rule 476A List, which would include all of the subsections of Rule 104 as described above.[8] The Exchange further notes that these summary fines may be imposed, as applicable, on either an individual DMM, or the DMM unit, as specified in the subsections to Rule 104.

Rule 123D

The Exchange also proposes to include a reference relating to delayed openings in the Rule 476A list, which is consistent with the existing NYSE MRVP. The Exchange further proposes to expand the reference to Rule 123D and include other elements of that rule as being eligible under the Exchange's Minor Rule Violation Plan.

The NYSE MRVP currently provides that ''violations of Exchange policies regarding procedures to be followed in delayed opening situations'' are eligible for summary fines under the Minor Rule Violation Plan. Such policies are codified in both NYSE Rule 123D and NYSE Amex Equities Rule 123D. The Exchange proposes to add the requirements of DMMs that are set forth in Rule 123D relating not only to delayed openings, but also to openings, re-openings, trading halts, and tape indications to the Rule 476A List. The Exchange believes that the additional flexibility of determining the appropriate level of discipline for DMM violations of Rule 123D conforms to the purpose of the existing Rule 476A List. In particular, the Exchange notes that adding Rule 123D in its entirety as it relates to DMM conduct is consistent both with the NYSE's proposed rules and with the inclusion of NYSE Rule 15 in the NYSE MRVP, which similarly governs DMM's conduct with respect to pre-opening indications and which, as discussed above, is being proposed to be added to the Rule 476A List.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Securities Exchange Act of 1934, as amended,[9] (the ''Act''), in that they 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 a national market system and, in general, to protect investors and the public interest. The proposed rule changes also further the objectives of Section 6(b)(6),[10] in that they provide for appropriate discipline for violations of provisions of the Act, the rules and regulations thereunder, and Exchange rules and regulations.

The Exchange believes that the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices because they will provide the Exchange with greater regulatory flexibility to enforce the DMM requirements set forth in NYSE Amex Equities Rules 104 and 123D in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted. In addition, the proposed rule change removes impediments to and perfects the mechanism of a free and open market by updating the Minor Rule Violation Plan by updating rule cite references, deleting references to obsolete rules, and for DMM-related rules, both updating the rule references to reflect

[7] *See* Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR–NYSEAmex–2010–96).

[8] The Exchange notes that it has separately proposed to delete NYSE Amex Equities Rule 104(a)(6). *See* Securities Exchange Act Release No. 65735 (Nov. 10, 2011) (SR–NYSEAmex–2011–86). The Exchange further notes that other elements of Rule 104, *i.e.,* Rule 104(j) and supplementary material .05, are not related to DMM obligations, but rather reflect operational aspects of the Exchange.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

the current rules that govern the topics currently identified in outdated rule references in the Minor Rule Violation Plan as well as adding additional elements of the rules governing DMM conduct.

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 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–NYSEAmex–2012–10 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–NYSEAmex–2012–10. 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–NYSEAmex–2012–10 and should be submitted on or before March 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–5205 Filed 3–2–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66484; File No. SR–Phlx–2012–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Adopt an Administrative Fee for the Payment for Order Flow Program

February 28, 2012.

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 February 21, 2012, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] 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 its payment for order flow program. Phlx proposes to amend Section II of its Fee Schedule to adopt an administrative fee, as described further below. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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

The Exchange currently has a payment-for-order-flow (''PFOF'') program that helps its Specialists[5] and Directed Registered Options Traders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

(''Directed ROTs'')[6] establish PFOF arrangements with an order flow provider in exchange for that order flow provider directing some or all of its order flow to that Specialist or Directed ROT. This program is funded through fees paid by Registered Options Traders (''ROTs''), Specialists and Directed ROTs and assessed on transactions resulting from customer orders (the ''PFOF Fees'').[7]

These PFOF Fees are available to be disbursed by the Exchange according to the instructions of the Specialist units/Specialists or Directed ROTs to order flow providers who are members or member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders. Any excess payment for order flow funds billed but not utilized by the Specialist or Directed ROT are carried forward unless the Directed ROT or Specialist elects to have those funds rebated to the applicable ROT, Directed ROT or Specialist on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange calculates the amount of excess funds from the previous quarter and subsequently rebates excess funds on a pro-rata basis to the applicable ROT, Directed ROT or Specialist who paid into that pool of funds.

The Exchange now proposes to adopt an administrative fee to offset its costs in administering the PFOF program. Specifically, Phlx proposes to assess an administrative fee of 0.45% of the total amount of PFOF Fees collected each month. Phlx will closely monitor the amount of funds raised by this administrative fee and amend the fee in the future if necessary, so that the fee provides sufficient funds to adequately offset Phlx's costs in administering the PFOF program.

Phlx proposes to implement this fee beginning on March 1, 2012. Phlx is not making any other changes to its PFOF program.

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 and other persons using its facilities.

The Exchange believes that it is reasonable to assess the administrative fee in that it should permit the Exchange to offset its costs in administering the PFOF program. As noted above, the Exchange will closely monitor the amount of funds raised by this administrative fee and amend the fee in the future if necessary, so that the fee provides sufficient funds to adequately offset the Exchange's costs in administering the PFOF program.

The Exchange believes that it is equitable and not unfairly discriminatory to assess the administrative fee because it would apply uniformly to all funds collected under the PFOF program as a means to offset costs of collecting and administering such funds.

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 establishes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(2) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx-2012–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 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–Phlx–2012–24 and should be submitted on or before March 26, 2012.

[6] A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii). A ''Directed ROT'' is an ROT who is a Directed Participant. The term ''Directed Participant'' applies to transactions for the account of a Specialist or ROT resulting from a customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

[7] *See* Securities Exchange Act Release No. 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR–Phlx–2009–38).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–5206 Filed 3–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66485; File No. SR–FICC–2012–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Make a Technical Correction to the Rule Relating to the Calculation of Funds-Only Settlement Amounts for Repo Brokers

February 28, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder notice is hereby given that on February 14, 2012, the Fixed Income Clearing Corporation (''FICC'') 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 primarily by FICC. 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 proposed rule change consists of modifications to Rule 19, Section 4 of the rules of the Government Securities Division (''GSD'') of FICC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to make technical corrections to GSD Rule 19 (Special Provisions For Brokered Repo Transactions), Section 4 (Calculations of Funds-Only Settlement Amounts for Repo Brokers) as described below. GSD Rule 19, Section 4 states that FICC may retain any amount of a Credit Forward Mark Adjustment Payment that is in excess of the Cap[4] and that interest earned on such amount shall be paid to the Repo Broker on the subsequent business day. The second part of this sentence is incorrectly stated because FICC pays interest to those who were debited forward mark adjustment amounts not those who were credited such amounts. On the following day (*i.e.,* the day after the broker received the Credit Forward Mark Adjustment Payment) when the broker is debited the interest for the use of funds it received as a credit, the broker will be debited the interest on the amount that it actually received as a credit (*i.e.,* it will not be debited interest for the amount of Credit payment withheld above the Cap). The rule is also revised to state that Repo Brokers with more than one Segregated Repo Account must aggregate Debit Forward Mark Adjustments and Credit Forward Mark Adjustment Payments in those accounts for purposes of the Cap. The Repo Brokers currently comply with this correction and the revision reflects current practice.

FICC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it makes technical corrections to its rules to ensure that they are consistent and accurate.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FICC–2012–01 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–FICC–2012–01. 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.,

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] The GSD rules define ''Cap'' as any Debit Forward Mark Adjustment Payment or Credit Forward Mark Adjustment Payment up to a dollar amount, as determined by FICC from time to time, that is automatically collected from or paid to the Repo Broker, as applicable.

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 FICC's principal office and on FICC's Web site at *http://dtcc.com/downloads/legal/rule_filings/2012/ficc/SR_FICC_2012_01.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FICC–2012–01 and should be submitted on or before March 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–5207 Filed 3–2–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66487; File No. SR–C2–2012–007]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule of Market Data Express, LLC

February 28, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2012, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 the Fee Schedule of Market Data Express, LLC (''MDX''), an affiliate of C2. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a monthly fee of $500 per data port that MDX will charge for access to certain market data with respect to the trading of options on C2's market.[3]

C2 currently collects and processes market data with respect to options quotes and orders and the prices of trades that are executed on the Exchange. This market data includes the ''best bid and offer,'' or ''BBO'', consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size (''BBO data,'' sometimes referred to as ''top of book data''). Data with respect to executed trades is referred to as ''last sale'' data. C2 formats its BBO data and last sale data according to Options Price Reporting Authority (''OPRA'') specifications and sends the data to OPRA for redistribution to the public.

MDX provides to ''Customers'' [4] a real-time, low latency data feed that includes the C2 BBO data and last sale data. (This data feed is sometimes referred to in this filing as the ''BBO Data Feed''). The BBO and last sale data contained in the BBO Data Feed is identical to the data that C2 sends to OPRA.[5] In addition, the BBO Data Feed includes certain data that is not included in the data sent to OPRA, namely, totals of customer versus non-customer contracts at the BBO, All-or-None contingency orders priced better than or equal to the BBO, and BBO data and last sale data for complex strategies (*e.g.,* spreads, straddles, buy-writes, etc.).

MDX currently charges Customers a ''direct connect fee'' of $1,000 per connection per month as well as a ''per user fee'' of $25 per month per ''Authorized User'' or ''Device'' for receipt of the BBO Data Feed by Subscribers. An ''Authorized User'' is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the BBO Data Feed supplied by the Customer. A ''Device'' is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form. Either a C2 Trading Permit Holder or a non-C2 Trading Permit Holder may be a Customer. All Customers are assessed the same fees.

MDX provides ports that allow Customers to direct connect to MDX to receive the data feed. Currently, such ports are provided to Customers free of charge. However, MDX recently made an investment to upgrade the equipment involved in the ports, and maintenance and upkeep of such ports has gotten costly, as well. As such, MDX proposes to assess a monthly fee of $500 per data port in order to recoup such costs and maintain such equipment in the future, as well as cover other administrative costs. This amount is similar to the amount of fees assessed by other exchanges for access to similar data feed ports.[6]

The proposed fees would be implemented on March 1, 2012.

[3] The Commission notes that the MDX Fee Schedule is available at *https://www.cboe.org/MDX/CSM/OBOOKMain.aspx.*

[4] A ''Customer'' is any entity that receives the BBO Data Feed directly from MDX's system and then distributes it either internally or externally to Subscribers. A ''Subscriber'' is a person (other than an employee of a Customer) that receives the BBO Data Feed from a Customer for its own internal use.

[5] The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to OPRA. The Exchange also notes that it also makes the BBO data and last sale data that is included in the BBO Data Feed available directly to its Trading Permit Holders, and permits them to redistribute the data to their customers.

[6] *See* Securities Exchange Act Release No. 64964 (July 26, 2011) (SR–EDGA–2011–22) *and* Securities Exchange Act Release No. 64963 (July 26, 2011) (SR–EDGX–2011–21) (in which EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'') each assess a monthly fee of $500 per port for access to logical ports used to receive market data) *and also* Rule 7015(g) of the NASDAQ Stock Market LLC (''NASDAQ'') (in which NASDAQ assesses a monthly fee of $600 per Internet port that is used to deliver market data).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed adoption of the monthly $500 per port fee is reasonable because the fee is within the same range as those assessed on other exchanges, and because MDX must recoup the costs of upgrading and maintaining the equipment involved in the ports, as well as cover other administrative costs.[9] The proposed adoption of the port fee is equitable and not unfairly discriminatory because it will be assessed to all market participants equally.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and paragraph (f) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* footnote 6.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2012–007 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–C2–2012–007. 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–C2–2012–007 and should be submitted on or before March 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–5278 Filed 3–2–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66486; File No. SR–CBOE–2012–016]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule of Market Data Express, LLC

February 28, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 the Fee Schedule of Market Data Express, LLC (''MDX''), an affiliate of CBOE. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a monthly fee of $500 per data port that MDX will charge for access to certain market data with respect to the trading of options on CBOE's market.[3]

CBOE currently collects and processes market data with respect to options quotes and orders and the prices of trades that are executed on the Exchange. This market data includes the ''best bid and offer,'' or ''BBO'', consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size (''BBO data,'' sometimes referred to as ''top of book data''). Data with respect to executed trades is referred to as ''last sale'' data. CBOE formats its BBO data and last sale data according to Options Price Reporting Authority (''OPRA'') specifications and sends the data to OPRA for redistribution to the public.

MDX provides to ''Customers''[4] a real-time, low latency data feed that includes the CBOE BBO data and last sale data. (This data feed is sometimes referred to in this filing as the ''BBO Data Feed''). The BBO and last sale data contained in the BBO Data Feed is identical to the data that CBOE sends to OPRA.[5] In addition, the BBO Data Feed includes certain data that is not included in the data sent to OPRA, namely, totals of customer versus non-customer contracts at the BBO, All-or-None contingency orders priced better than or equal to the BBO, and BBO data and last sale data for complex strategies (e.g., spreads, straddles, buy-writes, etc.).

MDX currently charges Customers a ''direct connect fee'' of $3,500 per connection per month as well as a ''per user fee'' of $25 per month per ''Authorized User'' or ''Device'' for receipt of the BBO Data Feed by Subscribers. An ''Authorized User'' is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the BBO Data Feed supplied by the Customer. A ''Device'' is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form. Either a CBOE Trading Permit Holder or a non-CBOE Trading Permit Holder may be a Customer. All Customers are assessed the same fees.

MDX provides ports that allow Customers to direct connect to MDX to receive the data feed. Currently, such ports are provided to Customers free of charge. However, MDX recently made an investment to upgrade the equipment involved in the ports, and maintenance and upkeep of such ports has gotten costly, as well. As such, MDX proposes to assess a monthly fee of $500 per data port in order to recoup such costs and maintain such equipment in the future, as well as cover other administrative costs. This amount is similar to the amount of fees assessed by other exchanges for access to similar data feed ports.[6]

The proposed fees would be implemented on March 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed adoption of the monthly $500 per port fee is reasonable because the fee is within the same range as those assessed on other exchanges, and because MDX must recoup the costs of upgrading and maintaining the equipment involved in the ports, as well as cover other administrative costs.[9] The proposed adoption of the port fee is equitable and not unfairly discriminatory because it will be assessed to all market participants equally.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and paragraph (f) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–016 on the subject line.

[3] The Commission notes that the MDX Fee Schedule is available at *https://www.cboe.org/MDX/CSM/OBOOKMain.aspx.*

[4] A ''Customer'' is any entity that receives the BBO Data Feed directly from MDX's system and then distributes it either internally or externally to Subscribers. A ''Subscriber'' is a person (other than an employee of a Customer) that receives the BBO Data Feed from a Customer for its own internal use.

[5] The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to OPRA. The Exchange also notes that it also makes the BBO data and last sale data that is included in the BBO Data Feed available directly to its Trading Permit Holders, and permits them to redistribute the data to their customers.

[6] *See* Securities Exchange Act Release No. 64964 (July 26, 2011) (SR–EDGA–2011–22) *and* Securities Exchange Act Release No. 64963 (July 26, 2011) (SR–EDGX–2011–21) (in which EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'') each assess a monthly fee of $500 per port for access to logical ports used to receive market data) *and also* Rule 7015(g) of the NASDAQ Stock Market LLC (''NASDAQ'') (in which NASDAQ assesses a monthly fee of $600 per Internet port that is used to deliver market data).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* footnote 6.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

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–2012–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 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–2012–016 and should be submitted on or before March 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–5277 Filed 3–2–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66483; File No. SR–NYSEARCA–2012–016]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Filing the Content Outline and Selection Specifications for the Proprietary Traders Qualification Examination (''Series 56'') Program

February 28, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 17, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to file the content outline and selection specifications for the Proprietary Traders Qualification Examination (''Series 56'') program. 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] 15 U.S.C. 78a.

[3] 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

Recently, the Exchange filed a proposed rule change to recognize a new category of limited representative registration for proprietary traders.[4] Specifically, the Exchange will recognize the new registration category, ''Proprietary Trader,'' and the new examination, the Series 56. The new Proprietary Trader category will be limited to persons engaged solely in proprietary trading.

The Exchange has been working with the Financial Industry Regulatory Authority (''FINRA'') and certain other exchanges, many of which have recently enhanced their registration requirements to require the registration of associated persons,[5] to develop the content outline and qualification examination that would be applicable to proprietary traders. The Series 56 examination program is shared by the Exchange and the following self-regulatory organizations (''SROs''): Boston Options Exchange; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Incorporated; International Securities Exchange, LLC; The NASDAQ Stock Market, NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; National Stock Exchange, Incorporated; New York Stock Exchange LLC; and NYSE Amex LLC. Upon request by the SROs referenced above, FINRA staff convened a committee of industry representatives, Exchange staff and staff from the other SROs referenced above to develop the criteria for the Series 56 examination program. Certain exchanges have submitted filings to the Commission to utilize the Series 56.[6]

The Series 56 examination tests a candidate's knowledge of proprietary trading generally and the industry rules applicable to trading of equity securities and listed options contracts. The Series 56 examination covers, among other things, recordkeeping and recording requirements; types and characteristics of securities and investments; trading practices; and display. execution, and trading systems. While the examination

[4] *See* SR–NYSEArca–2012–15 (filed February 9, 2012).

[5] *See e.g.,* Securities Exchange Act Release Nos. 63843 (February 4, 2011), 76 FR 7884 (February 11, 2011) (SR–ISE–2010–115); and 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010) (SR–CBOE–2010–084).

[6] *See e.g.,* Securities Exchange Act Release No. 64699 (June 17, 2011), 76 FR 36945 (June 23, 2011) (SR–CBOE–2011–056).

is primarily dedicated to topics related to proprietary trading, the Series 56 examination also covers a few general concepts relating to customers.[7]

The qualification examination consists of 100 multiple choice questions. Candidates will have 150 minutes to complete the exam. The content outline describes the following topical sections comprising the examination: Personnel, Business Conduct, and Recordkeeping and Reporting Requirements, nine questions; Markets, Market Participants, Exchanges, and SROs, eight questions; Types and Characteristics of Securities and Investments, 20 questions; Trading Practices and Prohibited Acts, 50 questions; and Display, Execution, and Trading Systems, 13 questions. Representatives from the applicable SROs intend to meet on a periodic basis to evaluate and, as necessary, update the Series 56 examination program.

The Exchange understands that the other applicable SROs will also file with the Commission similar filings regarding the Series 56 examination program. The Exchange proposes to implement the Series 56 examination program upon availability in Web CRD and notification to its membership.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[8] in general, and furthers the objectives of Section 6(c)(3)(B) of the Act,[9] pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons, in particular, by offering a new qualification examination for proprietary traders. This filing provides the content outline and relevant specifications for the Series 56 examination program, which the Exchange believes establishes the appropriate qualifications for this new registration category because it tests the knowledge generally applicable to proprietary trading.

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.

[7] Proprietary trading firms do not have customers.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(c)(3)(B).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. Waiver of the 30-day operative delay will allow persons engaged solely in proprietary trading to use the Proprietary Traders Qualification Examination (''Series 56'') as soon as it is available for NYSEArca in Web CRD. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[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).

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–2012–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2012–016. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 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–NYSEARCA–2012–016 and should be submitted on or before March 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–5276 Filed 3–2–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66482; File No. SR–NYSEAMEX–2012–013]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Filing the Content Outline and Selection Specifications for the Proprietary Traders Qualification Examination (''Series 56'') Program

February 28, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 14, 2012, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to file the content outline and selection specifications for the Proprietary Traders Qualification Examination (''Series 56'') program. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the Exchange filed a proposed rule change to recognize a new category of limited representative registration for proprietary traders.[4] Specifically, the Exchange will recognize the new registration category, ''Proprietary Trader,'' and the new examination, the Series 56. The new Proprietary Trader category will be limited to persons engaged solely in proprietary trading.

The Exchange has been working with the Financial Industry Regulatory Authority (''FINRA'') and certain other exchanges, many of which have recently enhanced their registration requirements to require the registration of associated persons,[5] to develop the content outline and qualification examination that would be applicable to proprietary traders. The Series 56 examination program is shared by the Exchange and the following self-regulatory organizations (''SROs''): Boston Options Exchange; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Incorporated; International Securities Exchange, LLC; The NASDAQ Stock Market, NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; National Stock Exchange, Incorporated; New York Stock Exchange LLC; and NYSE Arca, Inc. Upon request by the SROs referenced above, FINRA staff convened committee of industry representatives, Exchange staff and staff from the other SROs referenced above to develop the criteria for the Series 56 examination program. Certain exchanges have submitted filings to the Commission to utilize the Series 56.[6]

The Series 56 examination tests a candidate's knowledge of proprietary trading generally and the industry rules applicable to trading of equity securities and listed options contracts. The Series 56 examination covers, among other things, recordkeeping and recording requirements; types and characteristics of securities and investments; trading practices; and display, execution, and trading systems. While the examination is primarily dedicated to topics related to proprietary trading, the Series 56 examination also covers a few general concepts relating to customers.[7]

The qualification examination consists of 100 multiple choice questions. Candidates will have 150 minutes to complete the exam. The content outline describes the following topical sections comprising the examination: Personnel, Business Conduct, and Recordkeeping and Reporting Requirements, nine questions; Markets, Market Participants, Exchanges, and SROs, eight questions; Types and Characteristics of Securities and Investments, 20 questions; Trading Practices and Prohibited Acts, 50 questions; and Display, Execution, and Trading Systems, 13 questions. Representatives from the applicable SROs intend to meet on a periodic basis to evaluate and, as necessary, update the Series 56 examination program.

The Exchange understands that the other applicable SROs will also file with the Commission similar filings regarding the Series 56 examination program. The Exchange proposes to implement the Series 56 examination program upon availability in Web CRD and notification to its membership.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[8] in general, and furthers the objectives of Section 6(c)(3)(B) of the Act,[9] pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons, in particular, by offering a new qualification examination for proprietary traders. This filing provides the content outline and relevant specifications for the Series 56 examination program, which the Exchange believes establishes the appropriate qualifications for this new registration category because it tests the knowledge generally applicable to proprietary trading.

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.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* SR–NYSEAmex–2012–11 (filed February 9, 2012).

[5] *See e.g.,* Securities Exchange Act Release Nos. 63843 (February 4, 2011), 76 FR 7884 (February 11, 2011) (SR–ISE–2010–115); and 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010) (SR–CBOE–2010–084).

[6] *See e.g.,* Securities Exchange Act Release No. 64699 (June 17, 2011), 76 FR 36945 (June 23, 2011) (SR–CBOE–2011–056).

[7] Proprietary trading firms do not have customers.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(c)(3)(B).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. Waiver of the 30-day operative delay will allow persons engaged solely in proprietary trading to use the Proprietary Traders Qualification Examination (''Series 56'') as soon as it is available for NYSEAmex in Web CRD. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSEAMEX–2012–013 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–NYSEAMEX–2012–013. 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–NYSEAMEX–2012–013 and should be submitted on or before March 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–5275 Filed 3–2–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[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

[File No. 500–1]

China North East Petroleum Holdings Limited, Order of Suspension of Trading

March 1, 2012.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the securities of China North East Petroleum Holdings Limited (''NEP''), a Nevada corporation with principal executive offices in New York and oil drilling operations in the People's Republic of China. NEP's common stock is registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and is traded on NYSE Amex.

Questions have arisen regarding the accuracy and completeness of information contained in NEP's public filings with the Commission concerning, among other things, certain transfers of cash from the company's bank accounts to the personal bank accounts of related parties.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of NEP.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Exchange Act, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, March 1, 2012, through 11:59 p.m. EDT, on March 14, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–5373 Filed 3–1–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Aduddell Industries, Inc., Capital Markets Technologies, Inc., Challenger Powerboats, Inc., and CLX Medical, Inc.; Order of Suspension of Trading

March 1, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aduddell Industries, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Capital Markets Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Challenger Powerboats, Inc. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CLX Medical, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on March 1, 2012 and terminating at 11:59 p.m. EDT on March 14, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–5368 Filed 3–1–12; 4:15 pm]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0017]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Upcoming Quarterly Panel Meeting.

DATES: March 22, 2012, 8:30 a.m.–3:30 p.m. (EDT).

Location: Pier 5 Hotel.

ADDRESSES: 711 Eastern Avenue, Baltimore, MD 21201.

By Teleconference: 1–888–445–2238.

Followed by Pass code: 8448155.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: This discretionary panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The panel will advise the agency on the creation of an occupational information system tailored specifically for our disability determination process and adjudicative needs. Advice and recommendations will relate to our disability programs in the following areas: Medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to our disability programs; data collection; use of occupational information in our disability programs; and any other area(s) that would enable us to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: The panel will meet on Thursday, March 22, 2012, from 8:30 a.m. until 3:30 p.m. (EDT).

The tentative agenda for this meeting includes: A presentation on the status of ongoing SSA FY 2012 OIS Development project and research activities currently underway; Occupational Information Development Advisory Panel Chair and subcommittee reports; public comment; panel discussion and deliberation; and, an administrative business meeting. We will post the final agenda on the Internet prior to the meeting at *http://www.socialsecurity.gov/oidap.*

The panel will hear public comment during the quarterly meeting on Thursday, March 22, 2012 from 2:30 p.m. to 3 p.m. (EDT). Members of the public must reserve a time slot—assigned on a first come, first served basis—in order to comment. In the event that scheduled public comment does not take the entire time allotted, the panel may use any remaining time to deliberate or conduct other business.

Those interested in providing testimony in person at the meeting or via teleconference should contact the panel staff by email to *OIDAP@ssa.gov* by March 16, 2012. Individuals providing testimony are limited to a maximum five minutes; organizational representatives, a maximum of ten minutes. You may submit written testimony, no longer than five (5) pages, at any time in person or by mail, fax or email to *OIDAP@ssa.gov* for panel consideration.

Seating is limited. Those needing special accommodation in order to attend or participate in the meeting (*e.g.,* sign language interpretation, assistive listening devices, or materials in alternative formats, such as large print or CD) should notify Leola Brooks via email to *leola.brooks@ssa.gov* no later than March 13, 2012. We will attempt to accommodate requests made but cannot guarantee availability of services. All meeting locations are barrier free.

For telephone access to the meeting, please dial toll-free to 1-(888) 455–2238 and enter the passcode: 8448155.

Contact Information: Records of all public panel proceedings are maintained and available for inspection. Anyone requiring further information should contact the panel staff at: Occupational Information Development Advisory Panel, Social Security Administration,6401 Security Boulevard, 3–E–26, Robert M. Ball Federal Building, Baltimore, MD 21235–0001. Fax: 410–597–0825. Email to: *OIDAP@ssa.gov.* For additional information, please visit the panel Web site at *www.ssa.gov/oidap.*

Leola S. Brooks,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. 2012–5214 Filed 3–2–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Guidance on the Use of Rounding in Air Fare Advertisements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice Providing Guidance on the Use of Rounding in Air Fare Advertisements.

SUMMARY: The Department is publishing the following notice providing guidance on the use of rounding in air fare advertisements.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Attorney, Office of Aviation Enforcement and Proceedings (C–70), 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 366–9349.

This notice is intended to provide guidance to air carriers, foreign air carriers, and ticket agents regarding

compliance with the full-fare disclosure mandate of the Department's recent consumer rule, ''Enhancing Airline Consumer Protections'' (14 CFR 399.84, 76 FR 23110, 23166, Apr. 25, 2011). The rule requires that in all fare advertisements for passenger air transportation, a tour, or a tour component the fare published by the vendor must represent the full amount payable by the consumer. Based on a recent review by the Office of Aviation Enforcement and Proceedings (Enforcement Office), a number of Internet sites display fares in whole dollar amounts that represent a rounding down of the exact fare, while other sites state the exact fare or round up.

To comply with the requirements of our recently revised full-fare advertising rule, sellers of air transportation must in all fare displays state either the exact fare or round up to an amount greater than the exact fare. This will avoid stating a fare that is lower than its actual amount and may be particularly important in sites which rank fares and display fare alternatives by fare amount. The Enforcement Office views any failure to show either the exact fare or to round up to an amount greater than the exact fare to constitute an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. 41712 as well as a violation of 14 CFR 399.84. Of course, sellers rounding up in their advertisements may sell the ticket at the exact fare when a purchase is made.

The Enforcement Office will allow vendors 60 days to revise their site displays, if necessary, prior to instituting enforcement action on the basis of a practice of rounding down fare amounts. These disclosure requirements extend to all vendors of air transportation. Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C–70), 1200 New Jersey Avenue, SE., Washington, DC 20590.

An electronic version of this document is available at *http://www.regulations.gov.*

Dated: February 28, 2012.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 2012–5217 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Best Equipped Best Served

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of meeting.

SUMMARY: The FAA is conducting a public meeting to seek technical input on proposed operational incentive scenarios for possible implementation in the 2012–2014 timeframe. The discussion will be limited to technical and operational implications of these selected scenarios. The candidate proposals for discussion have been designed to deliver on the best equipped, best performing, best served concept for implementation in the 2012–2014 timeframe. The proposed scenarios target use of the following NextGen technologies: ADS–B Out and In and RNAV/RNP 0.3 with and without RF Legs. This meeting is focused on technical considerations; before implementation of any potential scenario the FAA would conduct the necessary reviews and opportunities for public notice and comment as appropriate.

FOR FURTHER INFORMATION CONTACT: Christopher Hillers, Office of Aviation Policy and Plans: Telephone (202) 267–3274: Email: *9-AWA-APO-Ops-Incentives@FAA.gov.*

SUPPLEMENTARY INFORMATION:

Background

FAA has been analyzing and developing operational incentives for several years with the purpose of implementing a best equipped, best performing, best served policy. Best equipped, best served (BE–BS) has also been widely discussed in various industry forums, including the recent recommendations that were made by the Future of Aviation Advisory Committee (FAAC) and NextGen Advisory Committee (NAC). FAA is seeking stakeholder input on the technical and operational feasibility of the proposed scenarios from an operator and airport perspective.

Meeting Information

Public meeting at FAA Headquarters (800 Independence Avenue SW., Washington, DC 20591) on March 13, 2012 from 8:30 a.m. to 12:30 p.m. The meeting will also be available to view on-line. Details of participation by Web cast can be found at *http://www.faa.gov/go/2012opsincentivesmeeting/.* RSVPs will be required in order to attend the meeting in person, and requested for participants intending to view the Web cast. RSVP by March 9 to: *9-AWA-APO-Ops-Incentives@FAA.gov.*

Descriptions of each of the operational scenarios for discussion at the March 13 meeting can be obtained at: *http://www.faa.gov/go/2012opsincentivesmeeting/.* FAA will accept clarifying questions about these proposals via email at *9-AWA-APO-Ops-Incentives@FAA.gov.* Clarifying questions submitted in advance of the March 13 meeting will be addressed at the meeting, if possible. Comments specifically addressing these proposed operational scenarios will be accepted through March 20 and should be submitted to: *9-AWA-APO-Ops-Incentives@FAA.gov.*

Issued in Washington, DC, on February 28, 2012.

Nan Shellabarger,

Director Office of Aviation Policy and Plans.

[FR Doc. 2012–5304 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of a Non-Aeronautical Land-Use Change Effecting the Quitclaim Deed and Federal Grant Assurance Obligations at Blythe Airport, Blythe, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of a Non-aeronautical land-use change.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a non-aeronautical land-use change for approximately 829 acres of airport property at Blythe Airport, Blythe, California, from the aeronautical use provisions of the Quitclaim Deed and Grant Agreement Assurances since the land is not needed for aeronautical purposes. The property will be leased for its fair market value and the rental proceeds deposited in the airport account for airport use. The reuse of the land for a solar farm represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation and contributing to the self-sustainability of the airport.

DATES: Comments must be received on or before April 4, 2012.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Tony Garcia, Airports

Compliance Program Manager, Federal Aviation Administration, Airports Division, **Federal Register** Comment, P.O. Box 92007, Los Angeles, CA 90009–2007. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Colby Cataldi, Assistant Director, Economic Development Agency/Aviation, 3403 10 Street, Suite 500, Riverside, CA 92501.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

Riverside County Economic Development Agency requested a modification of the conditions in the Quitclaim Deed and Grant Agreement Assurances to permit non-aeronautical use of approximately 829 acres of land at Blythe Airport. The subject property is located northeast of the airfield. The land is presently unused and undeveloped. The land will be redeveloped for a solar farm. Riverside County Economic Development Agency proposes to lease the property under the terms of a long-term lease for a solar farm since the land is not needed for aeronautical purposes. Reuse of the land for a solar farm will not impede future development of the airport, which has an abundance of land. The lease rate will be based on the appraised market value and the lease proceeds will be deposited in the airport account and used for airport purposes. The use of the property for a solar farm represents a compatible use. Construction and operations of the solar farm will not interfere with airport operations. The land will become revenue-producing property, which will enhance the self-sustainability of the airport and, thereby, serve the interests of civil aviation.

Issued in Hawthorne, California, on February 28, 2012.

Brian Armstrong,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 2012–5299 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Underwater Locating Devices (Acoustic) (Self-Powered)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of revocation of Technical Standard Orders (TSO) C–121 and C–121a, Underwater Locating Devices (ULD).

SUMMARY: This is a confirmation notice for the planned revocation of all Technical Standard Order authorizations issued for the production of Underwater Locating Devices (Acoustic) (Self-Powered) manufactured to the TSO–C121 and TSO–C121a specifications. These actions are necessary because the planned issuance of TSO–C121b, Underwater Locating Devices (Acoustic) (Self-Powered), minimum performance standard (MPS) will increase the minimum operating life of Underwater Locating Devices from 30 days to 90 days.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Borsari, AIR–130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024. Telephone (202) 385–4578, fax (202) 385–4651, email to: *gregory.borsari@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 23, 2011, the Federal Aviation Administration (FAA) published a Notice in the **Federal Register**, Volume 76, page 52734, announcing the planned revocation of TSO–C121 and TSO–C121a authorizations and requested comments. The FAA proposed revising TSO–C121a to invoke the new SAE standard AS8045A which improves ULD performance, including increasing the battery operating life from 30 days to 90 days. When TSO–C121b is published, the FAA proposed withdrawing TSO–C121 and TSO–C121a authorizations no later than March 1, 2014. All Underwater Locating Devices (Acoustic) (Self-Powered) equipment manufacturers seeking TSO authorization would then need to obtain a new authorization to manufacture in accordance with TSO–C121b.

Comments

The FAA received four comments in response to the August 23, 2011, **Federal Register** Notice. The first comment, by Boeing Commercial Airplanes (Boeing), stated that the effective date of the planned withdrawal, March 1, 2014, appeared to have been calculated to provide two years between the publication date of the new TSO (approximately March 2012) and the withdrawal of the TSO authorizations. In order to allow orderly compliance, however, Boeing stated that industry needs the FAA to ensure at least three full years will be provided. Boeing stated that three years is the minimal time required for affected industry to address technical, business, and certification aspects of a new underwater locating device (ULD) before the existing devices can no longer be manufactured. Boeing urged the FAA take into consideration the fact that there are multiple flight data recorder suppliers with varying procurement methods and contractual details that will be necessary to address. Additionally, Boeing noted that the new SAE performance standards referenced in proposed TSO–C121b include new testing requirements. Boeing commented that one ULD manufacturer has already indicated that its existing 90-day ULD will not meet the requirements of the new SAE specification called out in the TSO, and therefore, a complete re-design of the unit will be necessary. The FAA agrees with Boeing's comment. TSO–C121b was published on February 28, 2012 and as such we have changed the withdrawal date to March 1, 2015. Boeing also stated that the effect of the planned TSO revocation would be to eliminate the manufacture of ULDs based on an older SAE Aerospace Standard that calls for a 30-day life, and requires the use of only ULDs based on a newer SAE standard that calls for a 90-day life. While Boeing recognized the current 14 CFR part 25 design regulations applicable to ULDs specified in 14 CFR 25.1457(g)(3) do not require a specific battery life, Boeing noted that the associated 14 CFR part 121 operating rules states in § 121.359(c)(2)(iii), the aircraft have an ''approved'' underwater locating device. By revising the TSO to require different performance standards of the new SAE specification, Boeing argued that it appears the FAA may essentially be implementing a new operating requirement without rulemaking to precede it. Boeing asked the FAA to review this process and clarify the intent.

The FAA acknowledges this comment. The TSO process is one method to gain approval for an underwater locating device, but not the only method. The FAA notes that it is within its authority to revoke, or withdraw, previous TSO–C121 and

TSO–C121a approvals. The intent of revoking TSO–C121 and TSO–C121a and only authorizing TSO–C121b is to enable future ULD designs that have a minimum operating life of 90 days. The FAA expects attrition of TSO–C121 and TSO–C121a approved ULDs to occur as older ULDs are replaced by TSO–C121b approved ULDs.

L–3 Communications Aviation Recorders (L–3) commented that a ULD designed to meet the 90-day performance criteria in SAE AS8045A will have a lithium battery large enough that it will be considered hazardous material. L–3 stated that it will need to follow DOT Hazardous Material Class 9 regulations to ship recorders outfitted with the 90-day beacon. L–3 noted this places considerable constraints on available carriers and the destinations to which they will ship. L–3 stated this would negatively impact their customers.

The FAA acknowledges that shipping regulations for hazardous material with regard to lithium batteries will need to be complied with.

L–3 Communications indicated its concern with the FAA plan of attrition for the 30-day beacon and what repercussions this has for configuration control for thousands of recorder part numbers and the field reparability of their beacons. Since it may take up to 6 years to replace a beacon battery, L–3 estimated that there will be years of both 30-day and 90-day beacons in service once the new TSO–C121b is in effect and TSO–C121 and TSO–C121a authorizations are revoked. In the event of a crash, L–3 noted that there will be unnecessary time required to determine if a 90-day beacon was onboard to warrant an extended search effort.

The FAA disagrees with this comment. Regardless whether or a not a planned retrofit program was invoked, both pre and post TSO–C121b configuration, control documentation requirements and process remain the same. The FAA acknowledges that today's action will introduce a mixed ULD equipage across the fleet. However, manufacturers currently produce both a 30-day and 90-day ULD that is recorded in the configuration control documentation. The FAA believes that no additional burden is imposed, to identify if a 30-day or a 90-day ULD is installed on an aircraft for an operator during an over-water accident investigation.

Conclusion

Based on the comments received, the FAA will revise TSO–C121a to invoke the SAE Minimum Performance Standard AS8045A, dated August 2011. Once TSO–C121b is published, the FAA will revoke TSO–C121 and TSO–C121a authorizations no later than March 1, 2015.

Issued in Washington, DC, on February 29, 2012.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2012–5213 Filed 3–2–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Application for Relief on Account of Loss, Theft, or Destruction of United States Savings and Retirement Securities and Supplemental Statement Concerning United States Securities.

DATES: Written comments should be received on or before May 1, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Titles: Claim For Lost, Stolen or Destroyed United States Savings and Retirement Securities and Supplemental Statement Concerning United States Securities.

OMB Number: 1535–0013.

Form Number: PD F 1048 and PD F 2243.

Abstract: The information is requested to issue owners substitute securities or payment in lieu of lost, stolen or destroyed securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 72,000.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 24,000.

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.

Dated: February 28, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–5179 Filed 3–2–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request By Fiduciary For Distribution of United States Treasury Securities

DATES: Written comments should be received on or before May 1, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Request By Fiduciary For Distribution of United States Treasury Securities.

OMB Number: 1535–0012.

Form Number: PD F 1455.

Abstract: The information is requested to issue owners substitute securities or payment in lieu of lost, stolen or destroyed securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 17,700.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 8,850.

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.

Dated: February 28, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–5190 Filed 3–2–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Treasury Department.

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Refund Of Purchase Price Of United States Savings Bonds For Organizations.

DATES: Written comments should be received on or before May 1, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Application For Refund Of Purchase Price Of United States Savings Bonds For Organizations.

OMB Number: 1535–0136.

Form Number: PD F 5410.

Abstract: The information is requested to support refund of purchase price of savings bonds to an organization.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 50.

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.

Dated: February 28, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–5193 Filed 3–2–12; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 43 March 5, 2012

Part II

The President

Notice of March 2, 2012—Continuation of the National Emergency With Respect to the Situation in Zimbabwe

Federal Register
Vol. 77, No. 43
Monday, March 5, 2012

Presidential Documents

Title 3—

The President

Notice of March 2, 2012

Continuation of the National Emergency With Respect to the Situation in Zimbabwe

On March 6, 2003, by Executive Order 13288, the President declared a national emergency and blocked the property of persons undermining democratic processes or institutions in Zimbabwe, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). He took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions. These actions and policies have contributed to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region.

On November 22, 2005, the President issued Executive Order 13391 to take additional steps with respect to the national emergency declared in Executive Order 13288 by ordering the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

On July 25, 2008, the President issued Executive Order 13469, which expanded the scope of the national emergency declared in Executive Order 13288 and ordered the blocking of the property of additional persons undermining democratic processes or institutions in Zimbabwe.

Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on March 6, 2003, and the measures adopted on that date, on November 22, 2005, and on July 25, 2008, to deal with that emergency, must continue in effect beyond March 6, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
March 2, 2012.

[FR Doc. 2012–5509
Filed 3–2–12; 2:15 pm]
Billing code 3295–F2–P

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H.R. 3630/P.L. 112–96
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To provide the Quileute Indian Tribe Tsunami and Flood Protection, and for other purposes. (Feb. 27, 2012; 126 Stat. 257)

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